

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)	
)	
Game Show Network, LLC.)	
Complainant)	
)	File No. CSR-8529-P
)	
v.)	
)	
Cablevision Systems Corporation,)	
Defendant)	

EXPERT REPORT OF JONATHAN ORSZAG

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I. QUALIFICATIONS

1. My name is Jonathan Orszag. I am a Senior Managing Director and member of the Executive Committee of Compass Lexecon, LLC, an economic consulting firm. My services have been retained by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. These engagements have involved a wide array of matters, from entertainment and telecommunications issues to issues affecting the sports and retail industries. I have provided testimony to administrative agencies, the U.S. Congress, U.S. courts, the European Court of First Instance, and other domestic and foreign regulatory bodies on a range of issues, including competition policy, industry structure, and fiscal policy.

2. Previously, I served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning and as an Economic Policy Advisor on President Clinton's National Economic Council. For my work at the White House, I was presented the Corporation for Enterprise Development's 1999 leadership award for "forging innovative public policies to expand economic opportunity in America."

3. I am a Fellow at the University of Southern California's Center for Communication Law & Policy and a Senior Fellow at the Center for American Progress. I received a M.Sc. from Oxford University, which I attended as a Marshall Scholar. I graduated *summa cum laude* in economics from Princeton University, was elected to Phi Beta Kappa, and was named to the *USA Today* All-USA College Academic Team. In 2004, I was named by the *Global Competition Review* as one of "the world's 40 brightest young antitrust lawyers and economists" in its "40 under 40" survey. In 2006, the *Global Competition Review* named me as one of the world's "Best Young Competition Economists."

4. I have been active in applied analysis of issues affecting the Multichannel Video Programming Distributor (“MVPD”) sector. While I served in the federal government, I worked on a number of policy issues involving the MVPD sector, including the implementation of the Satellite Home Viewer Improvement Act of 1999, which permitted Direct Broadcast Satellite (“DBS”) providers, such as EchoStar and DIRECTV, to offer subscribers local broadcast stations.¹

5. Since leaving government, I have served as a consultant to a number of major MVPDs (*e.g.*, DIRECTV, Comcast, Cablevision, and EchoStar) and programming providers (*e.g.*, Discovery, College Sports Television). I have worked on a number of mergers and/or acquisitions in the MVPD space, including the Comcast-Time Warner-Adelphia transaction; the proposed EchoStar-DIRECTV merger; the News Corp-DIRECTV merger; and other merger matters.

6. I have also submitted testimony to the Federal Communications Commission (“Commission”) and regulators throughout the world regarding mergers and regulatory matters affecting the MVPD sector. For example, I submitted testimony to the FCC regarding EchoStar’s acquisition of certain assets of Rainbow DBS; assessing potential regulations regarding a la carte and themed tier programming; regarding bundled programming deals; regarding the NFL Network’s claims that Comcast discriminated against the NFL Network in its carriage decisions; regarding the Mid-Atlantic Sports Network’s (“MASN”) claims that Comcast discriminated against MASN in its carriage decisions; regarding the Tennis Channel’s claims that Comcast discriminated against the Tennis Channel in its carriage decisions; assessing the exclusive contract prohibition between vertically integrated cable operators and programmers;

¹ See, *e.g.*, www.fcc.gov/mb/shva/shvia.pdf (downloaded on February 1, 2010).

and regarding distant network royalty fees. I also testified before FCC Chief Administrative Law Judge Richard Sippel in the *NFL Enterprises v. Comcast*, *MASN v. Comcast*, and *Tennis Channel v. Comcast* proceedings. For these engagements, I analyzed the nature of competition between TV networks and MVPDs, I interviewed executives, I reviewed contracts and other confidential company documents, and I analyzed data on advertising revenues; affiliate fees; network carriage; programming genres, costs, and expenditures; subscriber surveys; and financial statements.

7. My full *curriculum vitae*, including prior testimony, is included as Attachment 1. The hourly rate charged by Compass Lexecon for my work on this matter is \$875 per hour, and I have a financial interest in the overall profitability of the firm. I have no financial interest in the outcome of this case.

II. THE ASSIGNMENT AND SUMMARY OF CONCLUSIONS

8. I have been asked by counsel for Cablevision Systems Corporation (“Cablevision”) to assess, from an economic perspective, certain claims made by Game Show Network, LLC (“GSN”) regarding Cablevision’s carriage of GSN. Specifically, GSN claims that Cablevision discriminates against it by carrying GSN on Cablevision’s iO Sports and Entertainment Pak (“S&E Tier”).² I have also been asked by counsel for Cablevision to respond to reports by Dr. Hal Singer and Mr. Timothy Brooks.³

² Program Carriage Complaint, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, October 11, 2011 (“Carriage Complaint”).

³ Expert Report of Hal J. Singer, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, November 19, 2012 (“Singer Report”).

9. In 1993, the Commission adopted regulations (as directed by Section 616 of the Communications Act of 1934, as amended) which state that:

“No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”⁴

I understand that the analysis of whether Cablevision’s carriage of GSN amounts to discrimination on the basis of affiliation in part entails analyzing whether GSN and Cablevision’s affiliated networks are “similarly situated.” As an economist, I interpret the “similarly situated” criterion as a test of whether the networks compete in a significant way for viewers, advertising, or programming content.⁵

10. I also understand that under the Commission’s regulations, pursuant to Section 616, to establish that Cablevision has committed a program carriage violation, GSN must demonstrate that:

- (a) Cablevision’s distribution of GSN discriminated “on the basis of affiliation ... in the selection, terms, or conditions for carriage of video programming;” and
- (b) The effect of Cablevision’s distribution of GSN was to “unreasonably restrain the ability” of GSN “to compete fairly.”⁶

Declaration of Timothy Brooks, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, November 19, 2012 (“Brooks Report”).

⁴ See 47 C.F.R. § 76.1301(c)).

⁵ If the networks did not compete in a significant way for viewers, advertisers, or programming content, Cablevision would not have an incentive to engage in discrimination. See *infra*, ¶ 13. In its *Tennis Channel, Inc., v. Comcast Cable Communications, L.L.C.* decision, the Commission considered four factors in assessing whether networks are similarly situated: (1) Similar Sports Programming; (2) Demographics; (3) Advertisers; and (4) Ratings. (*Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, File No. CSR-8258-P, ¶¶ 51-55.) These factors are entirely consistent with an assessment of the degree of competition between networks.

⁶ *Tennis Channel, Inc. v. Comcast Cable Communications, L.L.C.*, *Memorandum Opinion & Order*, Docket No. 10-204, File No. CSR-8258-P, FCC 12-78 (Jul. 24, 2012) ¶ 4.

Thus, my analysis focuses on (i) whether GSN and Cablevision's affiliated programming networks, WE tv and Wedding Central, compete in a significant way for viewers, advertising, or programming content, (ii) whether Cablevision's decision to carry GSN on the S&E Tier amounted to discrimination on the basis of affiliation, and (iii) whether Cablevision's carriage of GSN on the S&E Tier had the effect of restraining unreasonably GSN's ability to compete fairly.

11. For the purposes of my analysis, I am going to treat WE tv and Wedding Central as Cablevision affiliates. Cablevision spun off WE tv and Wedding Central to AMC Networks, Inc. ("AMC Networks") in July 2011.⁷ Wedding Central also ceased operating as a network in July 2011.⁸ However, Cablevision owned both WE tv and Wedding Central prior to July 2011, and specifically in the first quarter of 2011, when Cablevision retiered GSN and put it on the S&E Tier.⁹

12. Based on my analysis of relevant materials and based on my experience analyzing the pay television industry, I have reached the following conclusions:

- There was no significant competition between WE tv and GSN for viewers, advertisers, or programming content prior to Cablevision's retiering of GSN. There was, likewise, no significant competition between Wedding Central and GSN for viewers, advertisers, or programming content. From an economic perspective, I conclude, therefore, that GSN was not "similarly situated" with the Cablevision-affiliated networks.

⁷ See investors.amcnetworks.com/releasedetail.cfm?ReleaseID=588762 (accessed December 13, 2012).

⁸ See www.multichannel.com/content/amc-networks-divorces-wedding-central (accessed December 12, 2012).

⁹ Given the Commission's ownership attribution rules, I understand and will assume that WE tv is still considered an affiliate of Cablevision, even though AMC Networks is now a separate, publicly traded corporate entity.

- Cablevision’s decision to distribute GSN on the S&E Tier was consistent with rational business conduct, unmotivated by Cablevision’s affiliation with WE tv and Wedding Central.
- Because WE tv and Wedding Central did not compete with GSN for viewers, advertisers, or programming content in a significant way, Cablevision did not have an incentive, at the time of GSN’s retiering, to discriminate against GSN on the basis of affiliation in the carriage of the network.
- Cablevision’s distribution of GSN on the S&E Tier did not unreasonably restrain GSN’s ability to compete fairly for viewers, advertisers, or programming content.

In the remainder of my report, I discuss the theoretical and empirical evidence for my conclusions. My work on this matter is ongoing, and I retain the right to supplement my opinions, based on further analyses of data and documents. The list of materials I relied upon in reaching my conclusion is included as Attachment 2.

III. FROM AN ECONOMIC PERSPECTIVE, GSN IS NOT “SIMILARLY SITUATED” TO WE tv OR WEDDING CENTRAL: THEY DO NOT COMPETE SIGNIFICANTLY FOR VIEWERS, ADVERTISERS, AND PROGRAMMING CONTENT

13. Under standard economic theory, Cablevision could only plausibly have an incentive to discriminate against GSN in favor of its affiliated networks, WE tv and Wedding Central, if the prices charged by the affiliated networks were effectively constrained by GSN.¹⁰ If the prices charged by Cablevision’s affiliated networks were not significantly constrained by

¹⁰ Carlton, Dennis, "A General Analysis of Exclusionary Conduct and Refusal to Deal--Why Aspen and Kodak Are Misguided," *Antitrust Law Journal* Vol. 68, 2001, pp. 659-683; Whinston, Michael, "Tying, Foreclosure, and Exclusion," *American Economic Review*, Vol. 80, 1990, pp. 837-859.

GSN, WE tv and Wedding Central could not have obtained any benefits from GSN's retiering by Cablevision or from any alleged reduction in GSN's ability to compete.¹¹ The prices charged by WE tv and Wedding Central may be effectively constrained by GSN only if WE tv and Wedding Central faced significant competition for viewers, advertisers, or programming content from GSN. Thus, significant competition between GSN and Cablevision's affiliated networks WE tv and Wedding Central is a critical precondition for discriminatory conduct. Absent significant competition, Cablevision would not have any *incentive* to discriminate against GSN in the carriage of the network.¹²

14. My analysis demonstrates an absence of significant competition between WE tv and GSN or between Wedding Central and GSN. Moreover, as I discuss below, Dr. Singer and Mr. Brooks provide no credible evidence that WE tv or Wedding Central faced significant competition for viewers, advertisers, or programming content from GSN.

A. There Is No Significant Competition for Viewers between GSN and WE tv or between GSN and Wedding Central.

15. Two networks compete significantly for viewers if a significant number of viewers see the networks as substitutes or, alternatively, if reducing the availability of one network increases significantly the demand for the other network.

¹¹ I should note that if the prices charged by WE tv and Wedding Central are effectively constrained by many cable networks other than GSN, there would be no significant benefit to Cablevision's affiliated networks from any reduction in GSN's ability to compete, and, therefore, Cablevision would not have any incentive to discriminate against GSN in its carriage of the network.

¹² I use the term significant competition to distinguish from insignificant competition between cable networks. For example, there may be one viewer who is deciding whether to watch WE tv or GSN so that the two networks are competing for the viewership of that individual. However, competition between WE tv and GSN for just one viewer would be too insignificant to affect the networks' incentives in conducting business. Conversely, if the networks were competing for a relatively large (or significant) number of viewers, the competition between the networks would have the potential to affect the networks' business conduct.

16. A direct test of whether GSN and WE tv or GSN and Wedding Central competed for viewers may be performed by analyzing the effect of Cablevision's repositioning GSN from the expanded basic tier to the S&E Tier in February 2011 on the viewership of WE tv and Wedding Central by Cablevision's subscribers. [REDACTED]

[REDACTED] Under this test, there would be evidence of competition between GSN and WE tv (or Wedding Central) if Cablevision's repositioning of GSN onto the S&E Tier significantly increased WE tv (or Wedding Central) viewership. My analysis shows that Cablevision's retiering of GSN did not have a significant effect on WE tv's and Wedding Central's viewership.

17. I perform a number of other economic analyses to corroborate the results of such a direct test of competition between the networks. In particular, I analyze viewers' switching rates between networks. The switching rates provide an alternative measure of competition for viewers between networks. I also examine viewer audience overlap between networks. Viewer audience overlap between networks can provide additional insight into the state of competition between networks. Both the network switching and viewer audience overlap analyses are consistent with the results of the direct test of competition between the networks. [REDACTED]

Set-Top Box Data Provide a Reliable Basis for the Analysis of Network Competition

18. [REDACTED]

[REDACTED]¹³ [REDACTED]

¹³ [REDACTED]
[REDACTED] As of year-end 2010, Cablevision had 3.0 million

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]¹⁵ [REDACTED]

[REDACTED]

[REDACTED]¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

video subscribers in the New York Metropolitan service area and 3.3 million subscribers overall See Cablevision Systems Corp NY 10-K, filed February 11, 2011, Part I.1..

¹⁴ [REDACTED]

[REDACTED]

¹⁵ [REDACTED]

[REDACTED]

[REDACTED]

¹⁶ [REDACTED]

[REDACTED]

Overall Summary				Detailed Analysis	
Category A	Value 1	Value 2	Value 3	Sub-Category X	Sub-Category Y
Category B	Value 4	Value 5	Value 6	Sub-Category X	Sub-Category Y
Category C	Value 7	Value 8	Value 9	Sub-Category X	Sub-Category Y
Category D	Value 10	Value 11	Value 12	Sub-Category X	Sub-Category Y
Category E	Value 13	Value 14	Value 15	Sub-Category X	Sub-Category Y
Category F	Value 16	Value 17	Value 18	Sub-Category X	Sub-Category Y
Category G	Value 19	Value 20	Value 21	Sub-Category X	Sub-Category Y
Category H	Value 22	Value 23	Value 24	Sub-Category X	Sub-Category Y
Category I	Value 25	Value 26	Value 27	Sub-Category X	Sub-Category Y
Category J	Value 28	Value 29	Value 30	Sub-Category X	Sub-Category Y
Category K	Value 31	Value 32	Value 33	Sub-Category X	Sub-Category Y
Category L	Value 34	Value 35	Value 36	Sub-Category X	Sub-Category Y
Category M	Value 37	Value 38	Value 39	Sub-Category X	Sub-Category Y
Category N	Value 40	Value 41	Value 42	Sub-Category X	Sub-Category Y
Category O	Value 43	Value 44	Value 45	Sub-Category X	Sub-Category Y
Category P	Value 46	Value 47	Value 48	Sub-Category X	Sub-Category Y
Category Q	Value 49	Value 50	Value 51	Sub-Category X	Sub-Category Y
Category R	Value 52	Value 53	Value 54	Sub-Category X	Sub-Category Y
Category S	Value 55	Value 56	Value 57	Sub-Category X	Sub-Category Y
Category T	Value 58	Value 59	Value 60	Sub-Category X	Sub-Category Y
Category U	Value 61	Value 62	Value 63	Sub-Category X	Sub-Category Y
Category V	Value 64	Value 65	Value 66	Sub-Category X	Sub-Category Y
Category W	Value 67	Value 68	Value 69	Sub-Category X	Sub-Category Y
Category X	Value 70	Value 71	Value 72	Sub-Category X	Sub-Category Y
Category Y	Value 73	Value 74	Value 75	Sub-Category X	Sub-Category Y
Category Z	Value 76	Value 77	Value 78	Sub-Category X	Sub-Category Y
Category AA	Value 79	Value 80	Value 81	Sub-Category X	Sub-Category Y
Category AB	Value 82	Value 83	Value 84	Sub-Category X	Sub-Category Y
Category AC	Value 85	Value 86	Value 87	Sub-Category X	Sub-Category Y
Category AD	Value 88	Value 89	Value 90	Sub-Category X	Sub-Category Y
Category AE	Value 91	Value 92	Value 93	Sub-Category X	Sub-Category Y
Category AF	Value 94	Value 95	Value 96	Sub-Category X	Sub-Category Y
Category AG	Value 97	Value 98	Value 99	Sub-Category X	Sub-Category Y
Category AH	Value 100	Value 101	Value 102	Sub-Category X	Sub-Category Y
Category AI	Value 103	Value 104	Value 105	Sub-Category X	Sub-Category Y
Category AJ	Value 106	Value 107	Value 108	Sub-Category X	Sub-Category Y
Category AK	Value 109	Value 110	Value 111	Sub-Category X	Sub-Category Y
Category AL	Value 112	Value 113	Value 114	Sub-Category X	Sub-Category Y
Category AM	Value 115	Value 116	Value 117	Sub-Category X	Sub-Category Y
Category AN	Value 118	Value 119	Value 120	Sub-Category X	Sub-Category Y
Category AO	Value 121	Value 122	Value 123	Sub-Category X	Sub-Category Y
Category AP	Value 124	Value 125	Value 126	Sub-Category X	Sub-Category Y
Category AQ	Value 127	Value 128	Value 129	Sub-Category X	Sub-Category Y
Category AR	Value 130	Value 131	Value 132	Sub-Category X	Sub-Category Y
Category AS	Value 133	Value 134	Value 135	Sub-Category X	Sub-Category Y
Category AT	Value 136	Value 137	Value 138	Sub-Category X	Sub-Category Y
Category AU	Value 139	Value 140	Value 141	Sub-Category X	Sub-Category Y
Category AV	Value 142	Value 143	Value 144	Sub-Category X	Sub-Category Y
Category AW	Value 145	Value 146	Value 147	Sub-Category X	Sub-Category Y
Category AX	Value 148	Value 149	Value 150	Sub-Category X	Sub-Category Y
Category AY	Value 151	Value 152	Value 153	Sub-Category X	Sub-Category Y
Category AZ	Value 154	Value 155	Value 156	Sub-Category X	Sub-Category Y
Category BA	Value 157	Value 158	Value 159	Sub-Category X	Sub-Category Y
Category BB	Value 160	Value 161	Value 162	Sub-Category X	Sub-Category Y
Category BC	Value 163	Value 164	Value 165	Sub-Category X	Sub-Category Y
Category BD	Value 166	Value 167	Value 168	Sub-Category X	Sub-Category Y
Category BE	Value 169	Value 170	Value 171	Sub-Category X	Sub-Category Y
Category BF	Value 172	Value 173	Value 174	Sub-Category X	Sub-Category Y
Category BG	Value 175	Value 176	Value 177	Sub-Category X	Sub-Category Y
Category BH	Value 178	Value 179	Value 180	Sub-Category X	Sub-Category Y
Category BI	Value 181	Value 182	Value 183	Sub-Category X	Sub-Category Y
Category BJ					

Country			Year			
	2010	2011	2012	2013	2014	2015
Algeria	1.0	1.0	1.0	1.0	1.0	1.0
Angola	1.0	1.0	1.0	1.0	1.0	1.0
Argentina	1.0	1.0	1.0	1.0	1.0	1.0
Australia	1.0	1.0	1.0	1.0	1.0	1.0
Austria	1.0	1.0	1.0	1.0	1.0	1.0
Bahrain	1.0	1.0	1.0	1.0	1.0	1.0
Belgium	1.0	1.0	1.0	1.0	1.0	1.0
Brazil	1.0	1.0	1.0	1.0	1.0	1.0
Canada	1.0	1.0	1.0	1.0	1.0	1.0
Chile	1.0	1.0	1.0	1.0	1.0	1.0
China	1.0	1.0	1.0	1.0	1.0	1.0
Colombia	1.0	1.0	1.0	1.0	1.0	1.0
Costa Rica	1.0	1.0	1.0	1.0	1.0	1.0
Czechia	1.0	1.0	1.0	1.0	1.0	1.0
Denmark	1.0	1.0	1.0	1.0	1.0	1.0
Egypt	1.0	1.0	1.0	1.0	1.0	1.0
Ecuador	1.0	1.0	1.0	1.0	1.0	1.0
El Salvador	1.0	1.0	1.0	1.0	1.0	1.0
France	1.0	1.0	1.0	1.0	1.0	1.0
Germany	1.0	1.0	1.0	1.0	1.0	1.0
Ghana	1.0	1.0	1.0	1.0	1.0	1.0
Greece	1.0	1.0	1.0	1.0	1.0	1.0
Guatemala	1.0	1.0	1.0	1.0	1.0	1.0
Honduras	1.0	1.0	1.0	1.0	1.0	1.0
Hong Kong	1.0	1.0	1.0	1.0	1.0	1.0
Hungary	1.0	1.0	1.0	1.0	1.0	1.0
India	1.0	1.0	1.0	1.0	1.0	1.0
Indonesia	1.0	1.0	1.0	1.0	1.0	1.0
Italy	1.0	1.0	1.0	1.0	1.0	1.0
Jamaica	1.0	1.0	1.0	1.0	1.0	1.0
Japan	1.0	1.0	1.0	1.0	1.0	1.0
Kenya	1.0	1.0	1.0	1.0	1.0	1.0
Korea	1.0	1.0	1.0	1.0	1.0	1.0
Kuwait	1.0	1.0	1.0	1.0	1.0	1.0
Latvia	1.0	1.0	1.0	1.0	1.0	1.0
Lithuania	1.0	1.0	1.0	1.0	1.0	1.0
Luxembourg	1.0	1.0	1.0	1.0	1.0	1.0
Malaysia	1.0	1.0	1.0	1.0	1.0	1.0
Maldives	1.0	1.0	1.0	1.0	1.0	1.0
Mexico	1.0	1.0	1.0	1.0	1.0	1.0
Moldova	1.0	1.0	1.0	1.0	1.0	1.0
Morocco	1.0	1.0	1.0	1.0	1.0	1.0
Netherlands	1.0	1.0	1.0	1.0	1.0	1.0
New Zealand	1.0	1.0	1.0	1.0	1.0	1.0
Nigeria	1.0	1.0	1.0	1.0	1.0	1.0
North Macedonia	1.0	1.0	1.0	1.0	1.0	1.0
Norway	1.0	1.0	1.0	1.0	1.0	1.0
Oman	1.0	1.0	1.0	1.0	1.0	1.0
Pakistan	1.0	1.0	1.0	1.0	1.0	1.0
Panama	1.0	1.0	1.0	1.0	1.0	1.0
Paraguay	1.0	1.0	1.0	1.0	1.0	1.0
Peru	1.0	1.0	1.0	1.0	1.0	1.0
Poland	1.0	1.0	1.0	1.0	1.0	1.0
Portugal	1.0	1.0	1.0	1.0	1.0	1.0
Romania	1.0	1.0	1.0	1.0	1.0	1.0
Russia	1.0	1.0	1.0	1.0	1.0	1.0
Saudi Arabia	1.0	1.0	1.0	1.0	1.0	1.0
Senegal	1.0	1.0	1.0	1.0	1.0	1.0

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁷ [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷ [REDACTED]
[REDACTED]
[REDACTED]

¹⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22. GSN expert Timothy Brooks has raised questions about the reliability of STB data.¹⁹ In Appendix A, I present an analysis that tests the reliability of STB data. Overall, my conclusion is that the STB data are reliable for the purposes of my analysis. I also demonstrate in Appendix A that the STB data are consistent with Nielsen ratings data, which GSN’s own experts rely on. The consistency between the STB and Nielsen ratings data further demonstrates the reliability of the STB data. Moreover, the principal conclusions of my analysis of the STB data are corroborated by analyses of other data, including Nielsen ratings data.²⁰

23. I now address the specific assertions made by Mr. Brooks about STB data. Mr. Brooks raises questions about whether STB data can identify instances of actual viewership with complete certainty (e.g., he notes that just because the set-top box is tuned to a particular channel, it does not mean that anyone is watching the channel). Mr. Brooks asserts that STB data “reflects *tuning*, not *viewing*.”²¹ Mr. Brooks points out that STBs may remain turned on even after the TV set is turned off, which would indicate tuning into a network even though no one is watching.²² He also points out that STB data may not capture delayed viewing such as viewing a program via a Digital Video Recorder (“DVR”).²³ But Mr. Brooks’s criticisms of the STB data are irrelevant for the analysis I conduct herein. Mr. Brooks’s comments suggest a

¹⁹ Brooks Report ¶¶ 48 – 64..

²⁰ [REDACTED]

²¹ See Brooks Report ¶ 49, emphasis in original.

²² See Brooks Report ¶ 49.

²³ See Brooks Report ¶ 49.

fundamental misunderstanding of how STB data are used in my analysis. No viewership data collection process, including the one used by Nielsen, is error free. The relevant question is not whether STB data measure viewership perfectly, but rather whether STB data are reliable for the analysis of network competition. Based on my analysis, the answer to that question is an unambiguous “yes.”

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁴

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED]²⁵ In fact, a study conducted by Mr. Brooks himself

²⁴ See [REDACTED]

²⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

finds that the use of STB data is pervasive among MVPDs, which suggests that industry participants consider the STB data reliable to use in the ordinary course of business.²⁶

26. Mr. Brooks also claims that the reliability of the STB data is undermined by the lack of uniformity across the industry in how the data are obtained and processed. Again, Mr. Brooks appears to misunderstand my analysis of STB data. [REDACTED]

[REDACTED]

[REDACTED] Thus, Mr. Brooks's criticisms of lack of uniformity of STB data are misguided.

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED] If there were significant competition for viewers between GSN and WE tv, the retiering of GSN would have caused a significant increase in the viewership of WE tv (and likewise for competition between GSN and Wedding Central). Thus, a *direct test* of competition for viewership is a test of whether the retiering of GSN has

[REDACTED] See also "Audience Measurement Knowledge Primer," October 14, 2012.

²⁶ Brooks, Timothy, Stu Gray, and Jim Dennison, *The State of Set-Top Box Viewing Data as of December 2009*, February 24, 2010.

resulted in a significant increase of either WE tv's or Wedding Central's viewership. My application of the direct test demonstrates that there was no significant increase in WE tv's or Wedding Central's viewership as a result GSN's retiering. Therefore, I find that there was no significant competition for viewers between GSN and WE tv or between GSN and Wedding Central prior to retiering of GSN.

28. I provide a technical description of the direct test in Appendix B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁷ The effect of GSN’s retiering on WE tv’s and Wedding Central’s viewership is so small that it cannot be reliably distinguished from zero (or no effect) based on standard analysis of statistical significance.

30. The effect of GSN’s retiering on WE tv’s and Wedding Central’s viewership is also small relative to the viewership retiering effects for other networks. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]²⁸ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁸ The network listed as “Nickelodeon” in Table 2 represents a combination of Nickelodeon and Nick at Nite that share the same channel. Likewise, the network listed as “Cartoon” in Table 2 represents a combination of Cartoon Network and Adult Swim that also share the same channel. Thus, Nickelodeon and Cartoon entries in Table 2 stand for the channels that carry Nickelodeon/Nick at Nite and Cartoon Network/Adult Swim. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

Table 2. GSN Retiering Viewership Effect



32. In sum, my analysis of GSN, WE tv, and Wedding Channel viewership in April 2010 and 2011 demonstrates that the retiering of GSN had no significant effect on subscribers' demand for WE tv and Wedding Channel. 

²⁹ Ratings data for Wedding Central were not available.

Gender	Percentage of Respondents Vaccinated
Male	28%
Female	25%
Total	26%

between the networks. [REDACTED]

[REDACTED]

[REDACTED]

22

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]³² [REDACTED]

[REDACTED]³³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³³ The list of networks in Table 4 includes the networks from Table 2 as well as GSN.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 34

34 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 4. From WE tv Switching Rates

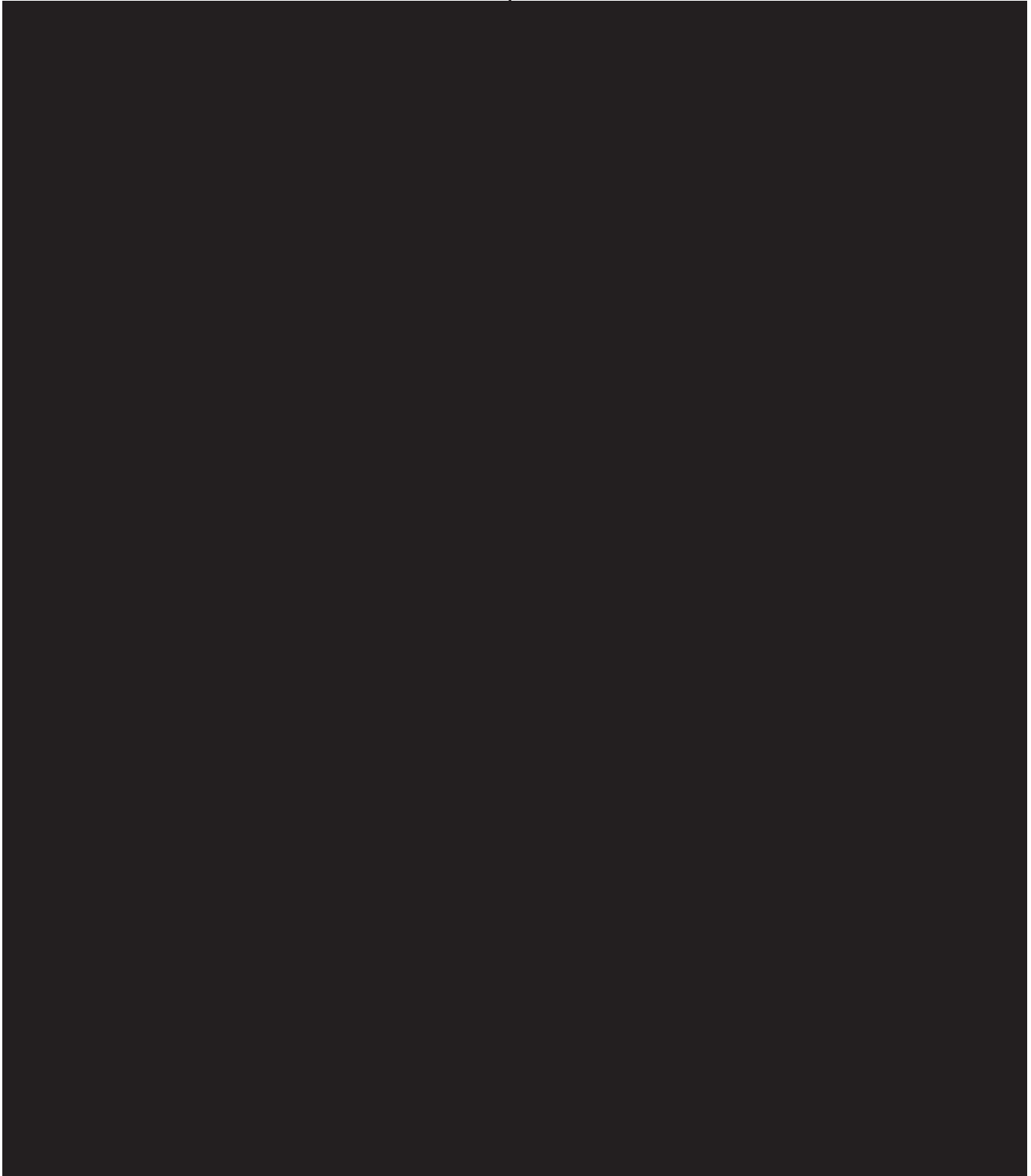
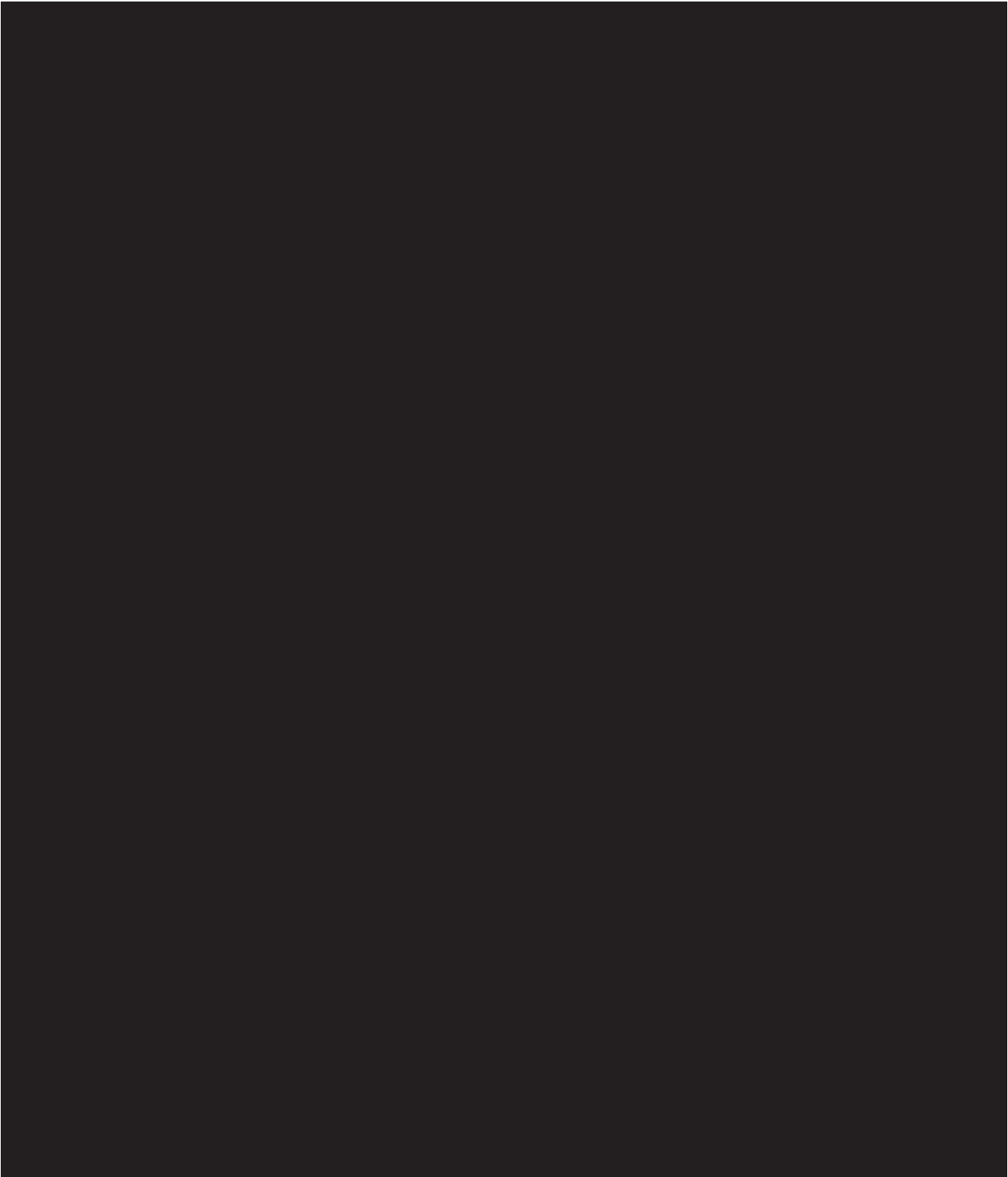


Table 5. To WE tv Switching Rates



38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁶ [REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]³⁷ [REDACTED]

³⁵ [REDACTED]

[REDACTED]

³⁶ [REDACTED]

[REDACTED]

³⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]



Table 6. From Wedding Central Switching Rates

A large, solid black rectangular redaction box covers the entire content area of the page, obscuring the data from Table 6. The box extends from the top of the table caption down to the footer.

40.

[REDACTED]

³⁸

[REDACTED]

³⁹

[REDACTED]

41.

[REDACTED]


³⁸

[REDACTED]

³⁹ The list of networks in Table 7 includes the national networks that are the same networks as those in Table 2.

[REDACTED]

Table 7. From GSN Switching Rates



[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

⁴⁰ [REDACTED] switching rate in April 2010 was [REDACTED] percent from GSN but only [REDACTED] percent from WE tv.

[REDACTED]

[REDACTED]⁴¹ [REDACTED]

[REDACTED]

[REDACTED]

45. Thus, it appears that WE tv and GSN viewers as well as Wedding Central and GSN viewers are quite *dissimilar* in terms of their viewing patterns. These results indicate that not only was there an absence of significant competition for viewership between WE tv and GSN or between Wedding Central and GSN, but that there was also relatively little overlap between the networks with which WE tv and GSN (or Wedding Central and GSN) competed with for viewership. Such differences between the WE tv and GSN switching rates and likewise between the Wedding Central and GSN switching rates suggest that there was a relatively low degree of viewer audience overlap between WE tv and GSN or between Wedding Central and GSN.

46. Additional perspective on the GSN – WE tv (and GSN – Wedding Central) switching rates may be gained by comparing these switching rates to benchmark switching rates between networks that appear to carry similar programming. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴² [REDACTED]

⁴¹ [REDACTED]

[REDACTED]

[REDACTED]

⁴² [REDACTED]

[REDACTED]

[REDACTED]

The results in Tables C1 – C10 show that the switching rates between WE tv and GSN are dwarfed by the switching rates between networks that carry apparently similar programming and appear to compete with each other for viewers. For example,

[illegible]

47. _____

[illegible]

A series of 15 horizontal black bars of varying lengths and positions, representing a barcode or a stylized text representation. The bars are arranged in a sequence, with some being solid and others having gaps or specific patterns.

[REDACTED]⁴³ [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Limited Degree of Viewer Audience Overlap between GSN and WE tv/Wedding Central Suggests an Absence of Significant Competition for Viewers between the Networks

50. Additional information about the state of competition for viewership between networks may be gleaned by examining viewer audience overlap between networks. Viewer audience overlap measures the degree to which viewers of one network watch the other – potentially competing – network. It is important to point out that although viewer audience overlap measures may provide some insight into potential competition for viewers between networks, such measures are not dispositive. If viewers of network A never watch network B and vice versa, such a lack of viewer audience overlap suggests that there may be relatively little competition for viewership between the two networks. However, if there were a significant population of viewers that spent considerable amount of time watching both networks A and B,

⁴³ [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

one should not conclude on this basis alone that there is significant competition for viewership between these networks. The fact that viewers watch both networks A and B does not mean that viewers are *choosing* between watching the networks or even consider watching network A as a substitute for watching network B, and vice versa. Indeed, the fact that viewers watch both networks indicates that they do not need to choose between the networks but can watch both.

51. An example can show this: I watch The Daily Show with Jon Stewart and I watch Homeland (when there are new episodes). Does this mean that these shows compete for my business (i.e., my eyeballs)? No. I do not view the shows as substitutes. I will watch both shows. If I could not see The Daily Show with Jon Stewart (because I am working on this report, for example), it would not make me more likely to watch Homeland.⁴⁴ Likewise, watching some programs on GSN does not necessarily preclude the viewer from watching programs on WE tv, and viewer overlaps or similarities in the viewer demographics between GSN and WE tv (if such existed) do not necessarily imply competition between the networks for viewers as a matter of economic logic.⁴⁵ Competition for viewers must be demonstrated empirically by considering the substitution patterns between networks. My direct test and switching rate analyses that I present above address this very question. Thus, the analysis of viewer audience overlap analysis is at most a way to gain additional insight into the behavior of viewers of GSN, WE tv, Wedding Central, but it is by no means an appropriate measure of the intensity of competition between the networks.

⁴⁴ This is in contrast to competition among airlines that provide service between Los Angeles and Washington, D.C. When I travel between Los Angeles and Washington, D.C., I choose one airline among the available options. Thus, I view the airlines that provide services between Los Angeles and Washington, D.C. as substitutes.

⁴⁵ That is, viewer audience overlap and similarity in programming content may be consistent with competition for viewers, but need not imply such competition.

52. One source of information about viewer audience overlap comes from the Nielsen audience duplication reports. The Nielsen audience duplication reports measure the percentage of viewers of one network who also watch another network during a given quarter (or some other time period). The Nielsen audience duplication reports measure viewer audience overlap between networks from the perspective of viewers of a particular network. I examine viewer audience duplication reports from the perspective of WE tv. I analyze for each network the percentage of WE tv viewers that watch the networks.⁴⁶ My analysis of the Nielsen WE tv audience duplication report data for the fourth quarter of 2010 (the last full quarter prior to Cablevision's retiering of GSN) shows that GSN ranks low on the list of networks watched by WE tv viewers.⁴⁷ Tables 8 and 9 below list networks in order of the percentage of WE tv viewers who viewed the networks in the fourth quarter of 2010.⁴⁸ Table 8 lists network viewership by *people* at least 18 years of age and Table 9 lists network viewership by *women* ages 25 to 54.

53. Table 8 and 9 show that in the fourth quarter of 2010, GSN ranked [REDACTED] among the networks watched by WE tv viewers both for all those 18 and older and for women ages 25 to 54. According to the Nielsen WE tv audience duplication report data, in the fourth quarter of 2010, [REDACTED] percent of WE tv viewers who were 18 years of age or older watched GSN *at any time during the quarter* and [REDACTED] percent of WE tv women viewers (ages 25 to 54) watched GSN *at any time during the quarter*. Therefore, my analysis of

⁴⁶ Analyzing viewer audience overlaps from the perspective of WE tv viewers show which networks *may* be competing with WE tv for viewers.

⁴⁷ I analyze the Nielsen audience duplication reports for total day viewership.

⁴⁸ The audience duplication report data in Tables 8 and 9 consider a person to be a viewer of a network if the person watched the network for at least six minutes in the period under consideration – one quarter in case of Tables 8 and 9.

the WE tv Nielsen audience duplication reports indicates a relatively low degree of overlap between GSN and WE tv viewer audiences. ■

Table 8. WE tv viewership by persons at least 18 years of age

1. *Journal of the American Medical Association*, 2000; 283: 2689-2693.

Table 9. WE tv viewership by women age 25-54

[illegible]

54. The Nielsen duplication reports that I analyze are limited in a number of ways. The reports only include cable networks and exclude broadcast networks. The inclusion of broadcast networks in the audience duplication analysis would only lower GSN's rank among networks watched by WE tv viewers. Moreover, the Nielsen duplication report data should be viewed with caution because these reports apply a relatively low threshold for what constitutes viewership of a network. I understand that the Nielsen duplication reports count viewers as having watched a program or network if the viewer watched that program or network for at least six minutes during the period examined by the report.⁴⁹ Thus, the fourth quarter 2010 Nielsen duplication report deems a viewer a WE tv – GSN overlap viewer if the viewer watched at least six minutes of WE tv and at least six minutes of GSN over the entire quarter. Considering that the Nielsen audience duplication reports apply a low threshold for network or program “viewership,” applying a higher threshold for defining network viewership would only reduce the magnitudes of viewer audience overlap. It should be noted that Dr. Singer analyzes some Nielsen audience duplication data that actually use a *one minute* viewership qualifier (where a person is considered to be a viewer of a network if the person watched the network for at least one minute over the entire quarter).⁵⁰

55. Nonetheless, the results of my analysis show that GSN ranks low relative to other networks in terms of the percentage of WE tv “viewers” that have “watched” other networks.

⁴⁹ See, e.g., www.allbusiness.com/glossaries/nielsen-rating/4964672-1.html#ixzz1gADV506j (downloaded on December 10, 2012). The Nielsen audience duplication report data in Tables 8 and 9 are based on the six-minute viewership qualifier. That is, the data consider a person to be a viewer of a network if the person watched the network for at least six minutes in the fourth quarter of 2010.

⁵⁰ The fourth quarter of 2010 Nielsen audience duplication data reported by Dr. Singer for total day viewership and the persons ages 18 or higher demographic are based on the one minute viewership qualified. (See GSN_CVC_00153511.)

That is, my analysis shows that out of the population of individuals who watch WE tv, a relatively small percentage also watch GSN.

56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. I analyze viewer audience overlaps between WE tv and GSN (and between Wedding Central and GSN) using the April 2010 STB data. Tables 10, 11 and 12 show (based on the STB data) network viewership shares by WE tv, Wedding Central, and GSN viewers. The lists of networks in these tables comprise the national networks that include both cable and broadcast networks. Table 10 ranks networks according to the average household viewership share in April 2010 by viewers who have watched WE tv for at least one hour in April 2010.⁵¹ The results of this analysis do not change significantly if I apply alternative time thresholds for defining network viewership.⁵² GSN ranks [REDACTED] among the networks in Table 10. Table 10 shows that GSN accounted for only about [REDACTED] percent share of total viewership among households that watched WE tv for at least one hour in April 2010. Table 11 ranks networks

⁵¹ [REDACTED]

⁵² If I apply a 30-minute threshold for defining a network viewing household, then GSN would rank [REDACTED] among WE tv viewing households and [REDACTED] among Wedding Central viewing households; WE tv would rank [REDACTED] and Wedding Central would rank [REDACTED] among GSN viewing households. If I apply a two-hour threshold for defining a network viewing household, then GSN would rank [REDACTED] among WE tv viewing households and [REDACTED] among Wedding Central viewing households; WE tv would rank [REDACTED] and Wedding Central would rank [REDACTED] among GSN viewing households.

according to the average household viewership share in April 2010 by viewers who have watched Wedding Central for at least one hour in April 2010.⁵³ GSN ranks [REDACTED] among the networks in Table 11. Table 11 shows that GSN accounted for only about [REDACTED] percent share of total viewership among households that watched Wedding Central for at least one hour in April 2010. Table 12 ranks networks according to the average household viewership share in April 2010 by viewers who have watched GSN for at least one hour in April 2010.⁵⁴ WE tv and Wedding Central rank [REDACTED] and [REDACTED] among the networks in Table 12. Table 12 shows that WE tv and Wedding Central accounted for only about [REDACTED] and [REDACTED] percent share, respectively, of total viewership among households that watched GSN for at least one hour in April 2010.

58. Tables 13, 14, and 15 show an alternative measure of viewer audience overlap between networks. Table 13 shows, for each national network, the network viewership share that is accounted for by households that watched WE tv for at least an hour in April 2010. I refer to this share as WE tv viewers' share of network viewership. WE tv viewers' share of network viewership provides a useful measure of viewer audience overlap between WE tv and other networks. Table 13 ranks networks by WE tv viewers' share of network viewership. The top ranked network in Table 13 is Wedding Central. Households that watched at least one hour of WE tv in April 2010 accounted for [REDACTED] percent of Wedding Central's viewership in the same month. GSN ranked [REDACTED] among the networks in Table 13. WE tv viewers' share of GSN viewership was only [REDACTED] in April 2010.

⁵³ [REDACTED]
[REDACTED]

⁵⁴ [REDACTED]
[REDACTED]

59. Table 14 shows Wedding Central viewers' share of network viewership for each national network.⁵⁵ The top ranked network in terms of Wedding Central viewers' share of network viewership was [REDACTED]: Wedding Central viewers' share of [REDACTED] viewership was [REDACTED] percent. GSN ranked [REDACTED] among the national networks in terms of Wedding Central viewers' share of viewership. Wedding Central viewers' share of GSN viewership was only [REDACTED] percent.

60. Table 15 shows GSN viewers' share of network viewership for each national network.⁵⁶ The top ranked network in terms of GSN viewers' share of network viewership was [REDACTED]: GSN viewers' share of [REDACTED] viewership was [REDACTED] percent. WE tv and Wedding Central ranked [REDACTED] and [REDACTED], respectively, among the national networks in terms of GSN viewers' share of viewership. GSN viewers' shares of WE tv and Wedding Central viewership were [REDACTED] and [REDACTED] percent, respectively.

61. To assess the magnitudes of the WE tv, Wedding Central, and GSN viewers' shares of network viewership, I calculate comparable measures for pairs of networks that offer apparently similar types of programming. These network pairs include: CNN – Fox News, MTV – VH1, Nickelodeon – Disney, ESPN – ESPN2, and TNT – USA. Tables D1 through D10 in Appendix D show the network viewership shares of viewers of these networks. Some highlights of the results include the following.⁵⁷

⁵⁵ I define Wedding Central viewers' share of network viewership as the percentage of network viewership that was accounted for by households that watched Wedding Central for at least an hour in April 2010.

⁵⁶ I define GSN viewers' share of network viewership as the percentage of network viewership that was accounted for by households that watched GSN for at least an hour in April 2010.

⁵⁷ A network viewer is defined as a household that watched a network for at least one hour in April 2010.

- MSNBC and Fox News ranked [REDACTED] and [REDACTED] in terms of CNN viewers' share of network viewership: CNN viewers accounted for [REDACTED] percent of MSNBC viewership and [REDACTED] percent of Fox News viewership in April 2010.
- CNBC and CNN ranked [REDACTED] and [REDACTED] in terms of Fox News viewers' share of network viewership: Fox News viewers accounted for [REDACTED] percent of CNBC viewership and [REDACTED] percent of CNN viewership in April 2010.
- VH1 ranked [REDACTED] in terms of MTV viewers' share of network viewership: MTV viewers accounted for [REDACTED] percent of VH1 viewership in April 2010.
- BET and MTV ranked [REDACTED] and [REDACTED] in terms of VH1 viewers' share of network viewership: VH1 viewers accounted for [REDACTED] percent of BET viewership and [REDACTED] percent of MTV viewership in April 2010.
- Teen Nick and Disney ranked [REDACTED] and [REDACTED] in terms of Nickelodeon viewers' share of network viewership: Nickelodeon viewers accounted for [REDACTED] percent of Teen Nick viewership and [REDACTED] percent of Disney viewership in April 2010.
- Teen Nick and Nickelodeon ranked [REDACTED] and [REDACTED] in terms of Disney viewers' share of network viewership: Disney viewers accounted for [REDACTED] percent of Teen Nick viewership and [REDACTED] percent of Nickelodeon viewership in April 2010.
- ESPNNews and ESPN2 ranked [REDACTED] and [REDACTED] in terms of ESPN viewers' share of network viewership: ESPN viewers accounted for [REDACTED] percent of ESPNNews viewership and [REDACTED] percent of ESPN2 viewership in April 2010.
- ESPNNews and ESPN ranked [REDACTED] and [REDACTED] in terms of ESPN2 viewers' share of network viewership: ESPN2 viewers accounted for [REDACTED] percent of ESPNNews viewership and [REDACTED] percent of ESPN viewership in April 2010.

- NBA TV and USA ranked [REDACTED] and [REDACTED] in terms of TNT viewers' share of network viewership: TNT viewers accounted for [REDACTED] percent of NBA TV viewership and [REDACTED] percent of USA viewership in April 2010.⁵⁸
- Sleuth and TNT ranked [REDACTED] and [REDACTED] in terms of USA viewers' share of network viewership: USA viewers accounted for [REDACTED] percent of Sleuth viewership and [REDACTED] percent of TNT viewership in April 2010.

These results are in stark contrast to the WE tv – GSN and Wedding Central – GSN viewer audience overlaps.

- GSN ranked [REDACTED] in terms of WE tv viewers' share of network viewership: WE tv viewers accounted for [REDACTED] percent of GSN's viewership in April 2010. WE tv ranked [REDACTED] in terms of GSN viewers' share of network viewership: GSN viewers accounted for [REDACTED] percent of WE tv's viewership in April 2010.
- GSN ranked [REDACTED] in terms of Wedding Central viewers' share of network viewership: Wedding Central viewers accounted for [REDACTED] percent of GSN's viewership in April 2010. Wedding Central tv ranked [REDACTED] in terms of GSN viewers' share of network viewership: GSN viewers accounted for [REDACTED] percent of Wedding Central's viewership in April 2010.

62. Thus, the viewer audience overlap measures between WE tv and GSN are very small relative to benchmark measures of viewer audience overlap of network pairs that show similar types of programming. Viewer overlap measures between Wedding Central and GSN are

⁵⁸ TNT and NBA TV both carried live NBA games and related content.

likewise very small. Based on the foregoing discussion, I find that there was relatively little viewer audience overlap between WE tv and GSN (and also relatively little viewer audience overlap between Wedding Central and GSN) prior to GSN's retiering. Therefore, the viewer overlap analysis further supports my finding of no significant competition for viewership between WE tv and GSN (and between Wedding Central and GSN) prior to GSN's retiering.



Table 10. Network Viewership Share by WE tv Household Viewership

[Redacted Table Content]

Table 11. Network Viewership Share by Wedding Central Household Viewership

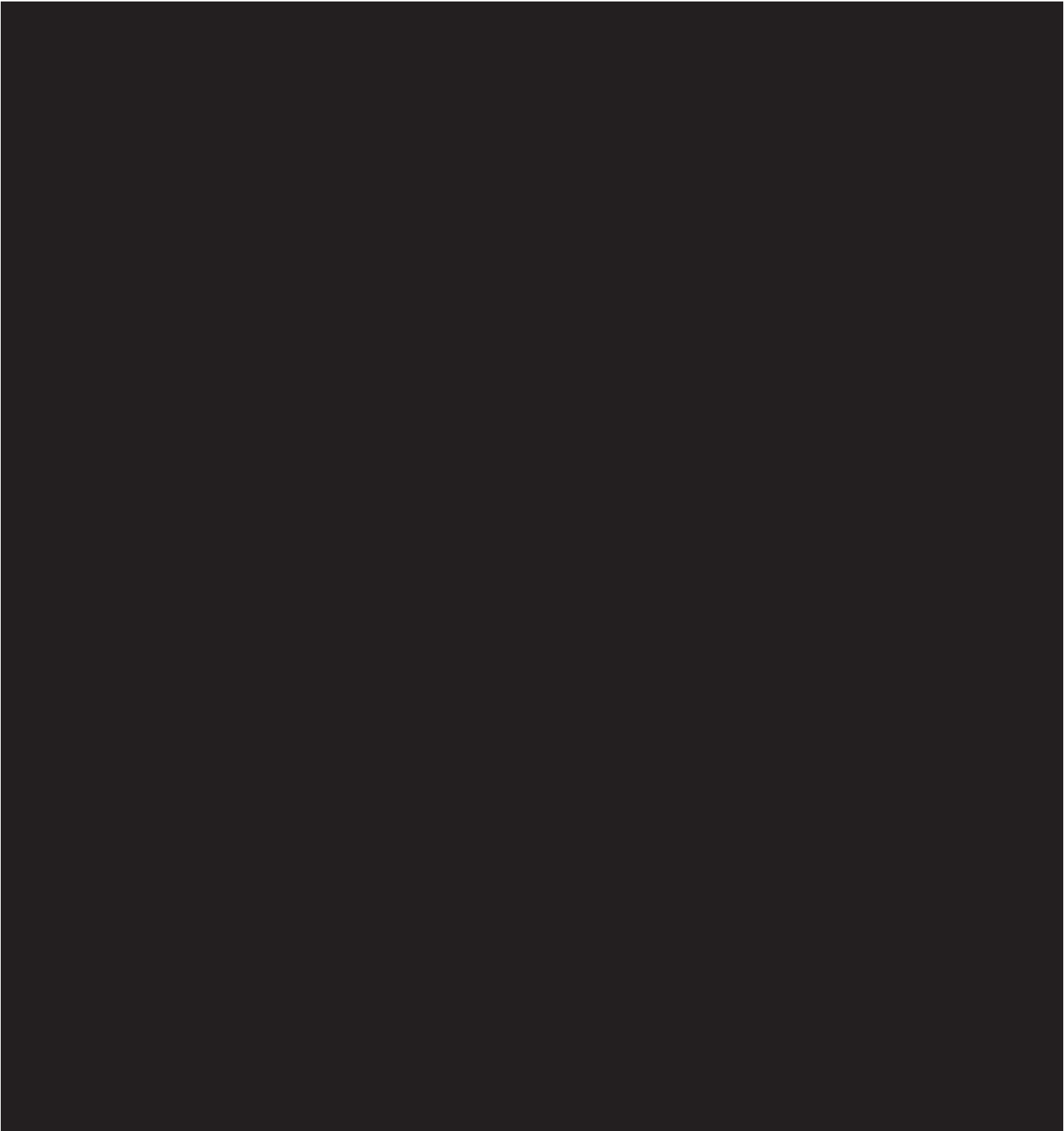


Table 12. Network Viewership Share by GSN Household Viewership

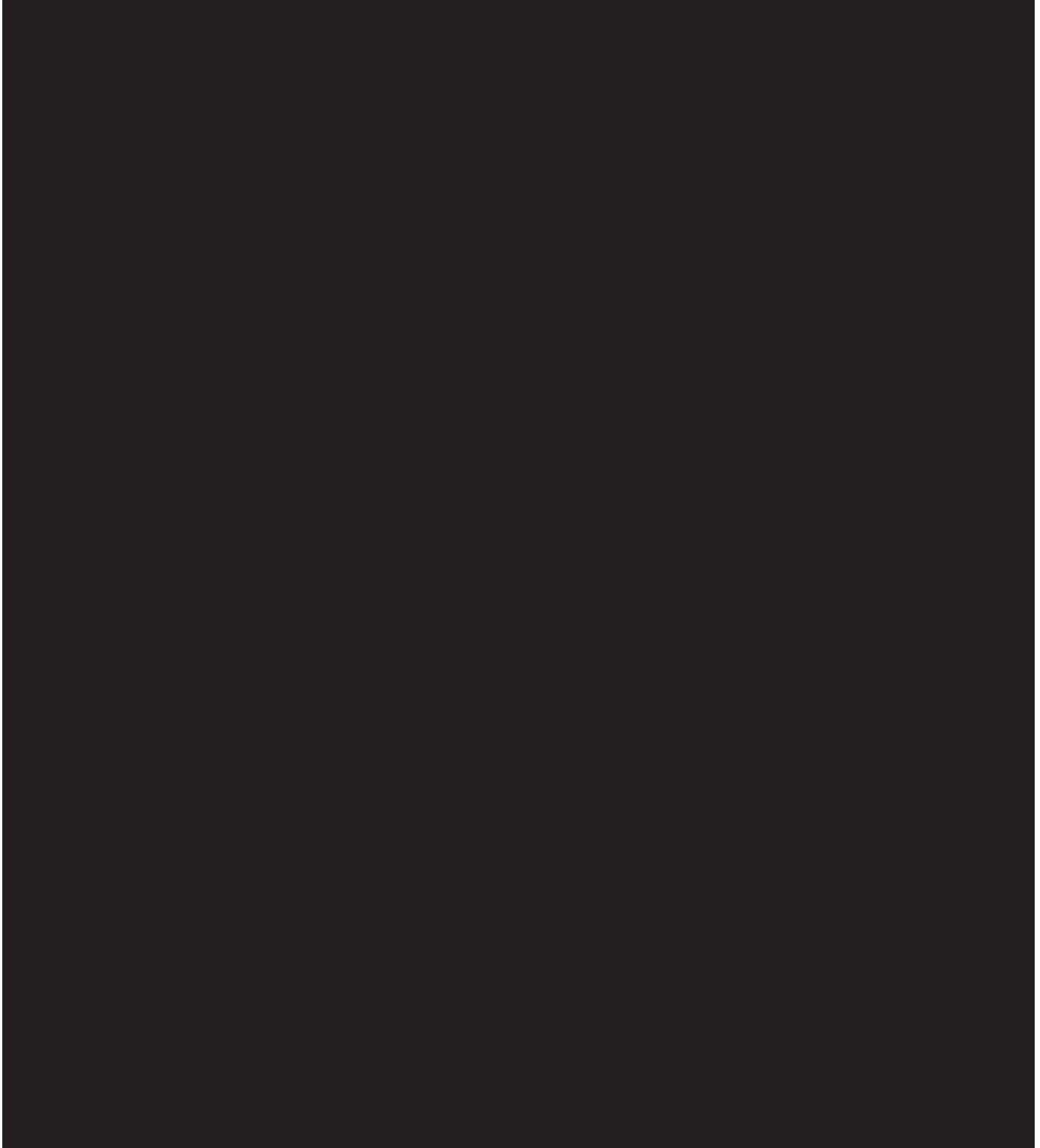


Table 13. WE tv Viewer Network Share (April 2010)

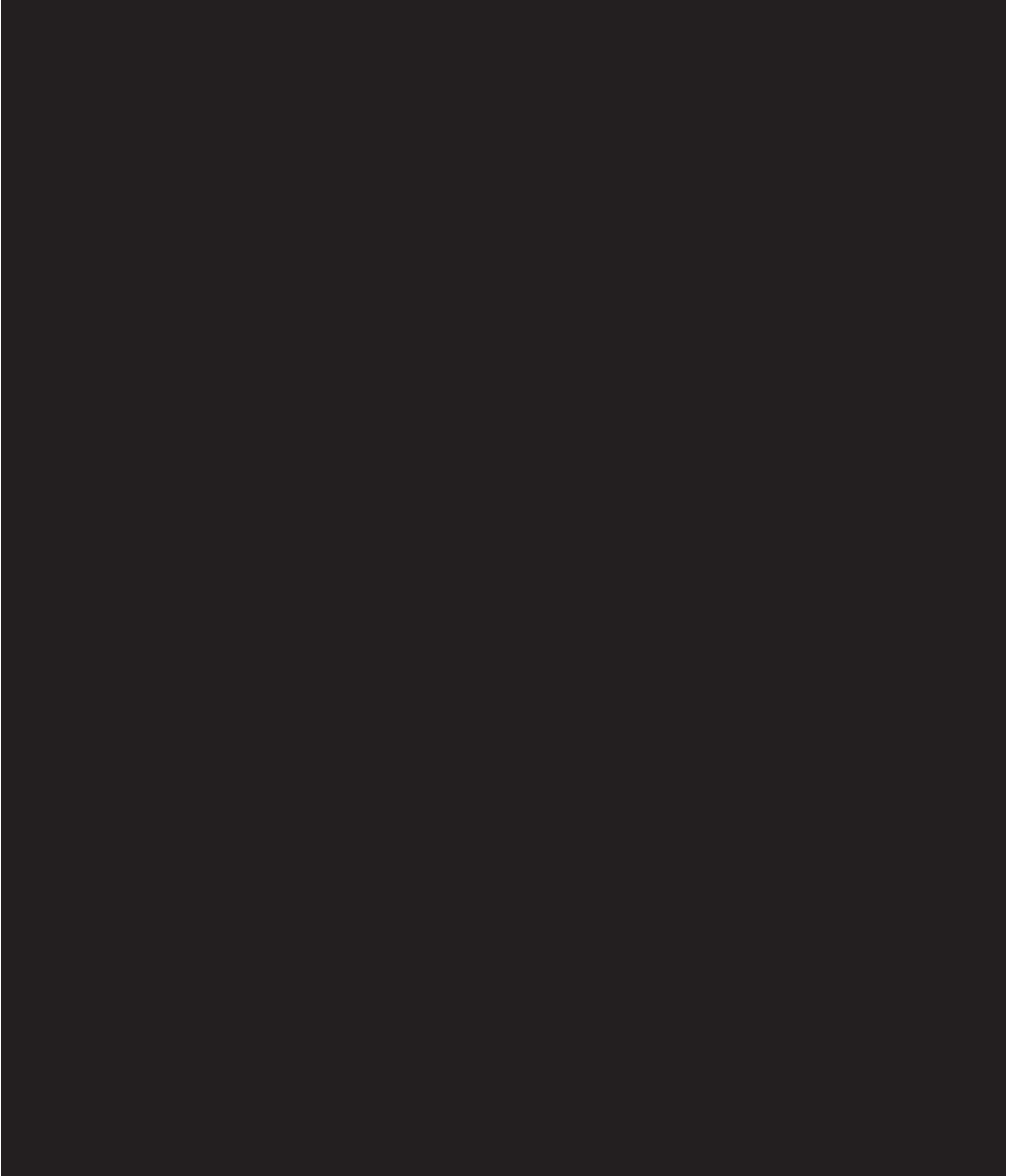


Table 14. Wedding Central Viewer Network Share (April 2010)



Table 15. GSN Viewer Network Share (April 2010)



■

Cablevision and GSN Documents Do Not Indicate Significant Competition Between GSN and WE tv/Wedding Central

63. My review of documents from GSN and Cablevision indicates no significant competition between either WE tv and GSN or between Wedding Central and GSN. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵⁹ [REDACTED]

[REDACTED]⁶⁰ [REDACTED]

[REDACTED]⁶¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

⁵⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁶⁰ For example, *see* GSN_CVC_00002998-3009, at 3002, 3006.

⁶¹ GSN_CVC_00016867-91, at 71.

[REDACTED]⁶² [REDACTED]

[REDACTED]

[REDACTED]⁶³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dr. Singer Offers No Reliable Evidence of Competition for Viewers Between GSN and WE tv/Wedding Central

65. Dr. Singer claims that his analysis indicates that WE tv and GSN are “similarly situated from the perspective of consumers.”⁶⁴ Dr. Singer appears to argue that viewers perceive WE tv and GSN as “similarly situated” because GSN carries a significant amount of “relationship-based programming.”⁶⁵ There are three major problems with this argument.

- *First*, determining whether or not a given program can be considered “relationship-based programming” is not economic analysis. Indeed, I am not aware what particular

⁶² See [REDACTED]

[REDACTED]

⁶³ [REDACTED]

⁶⁴ Singer Report ¶ 29.

⁶⁵ Singer Report ¶¶ 29-31.

economic expertise Dr. Singer is bringing to bear on his classification that certain programs are “relationship-based.”⁶⁶

- *Second*, Dr. Singer has no basis for reaching any conclusions about what the viewers “perceive.” Dr. Singer does not present any evidence that sheds light on how viewers *perceive* WE tv and GSN. He presents no survey results or viewer testimonials about whether viewers perceive programming on WE tv to be similar to programming on GSN.⁶⁷
- *Third*, even assuming that GSN and WE tv both carry what some viewers perceive as “relationship-based programming,” the viewers may not consider the programs on GSN and WE tv to be close alternatives or economic substitutes. Dr. Singer’s discussion of “relationship-based programming” actually has nothing to say about whether viewers consider the programs on GSN and WE tv to be economic substitutes.

66. Dr. Singer also argues that viewer audience overlap between GSN and WE tv suggests that viewers “perceive GSN and WE tv as competitive alternatives.”⁶⁸ As I explain above, this argument is a fallacy. Just because a particular population of viewers watch two different networks does not mean that the viewers consider the two networks to be close alternatives. For example, the [REDACTED] and [REDACTED] both have a high share of male viewership.⁶⁹ But the fact that the two networks skew male in their

⁶⁶ I understand that Cablevision’s programming expert, Michael Egan, refutes Dr. Singer’s characterization of the programming of GSN and WE tv as similar.

⁶⁷ I understand that Cablevision’s survey expert, Hal Poret, has conducted a survey that confirms that viewers familiar with GSN and WE tv view the two as carrying different types of programming content.

⁶⁸ Singer Report ¶ 32.

⁶⁹ See Appendix E.

viewership does not in any way imply that the viewers consider watching the [REDACTED] [REDACTED] to be a close substitute to watching [REDACTED]. Therefore, Dr. Singer's viewer audience overlap analysis does not in fact show that viewers consider WE tv and GSN to be close alternatives.⁷⁰

67. Moreover, Dr. Singer's analysis of viewer audience overlap is flawed. Dr. Singer examines viewer audience overlap between WE tv and GSN using the Nielsen audience duplication reports for the fourth quarter of 2010.⁷¹ Dr. Singer concludes that there is a relatively high degree of viewer audience overlap between WE tv and GSN both for total day and prime-time viewership. [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]⁷² There is no compelling reason why the both duplication measure would be at all relevant to assessing the degree of competition between networks. Both duplication does not measure the percentage of WE tv viewers who also watch GSN; nor does it measure the percentage of GSN viewers who also watch WE tv. There does not seem to be a clear intuition for what both duplication measures. Dr. Singer does not provide a clear explanation for why both duplication is an appropriate measure of viewer audience overlap for assessing competition between networks.

⁷⁰ It is worth noting that Dr. Singer explains that "a reasonable approximation" for assessing whether WE tv and GSN are "economic substitutes" is "an analysis of where GSN viewers turn after watching GSN." (Singer Report ¶ 32.) However, Dr. Singer does not perform such an analysis. In fact, this is the question addressed by my switching analysis that I discuss above. Dr. Singer's highly flawed viewer overlap analysis does not assess "where GSN viewers turn after watching GSN."

⁷¹ I examine the same data in my viewer audience overlap analysis.

⁷² Singer Report ¶ 33.

68. Dr. Singer finds that in the fourth quarter of 2010 for persons 18 or older the GSN - WE tv both duplication percentages were [REDACTED] percent for total day and [REDACTED] percent for prime-time.⁷³ These numbers indicate, based on Dr. Singer's data, that WE tv ranked [REDACTED] in terms of total day both duplication with GSN and [REDACTED] in terms of prime time both duplication with GSN (for people 18 years and older in the fourth quarter of 2010). However, alternative measures of viewer audience overlap provide additional perspective and show that there is relatively small viewer audience overlap between WE tv and GSN. My analysis of the Nielsen audience duplication reports for Q4 2010 (total day viewing) yields the following results.⁷⁴

- GSN's primary duplication rank from the perspective of WE tv (i.e., the percentage of WE tv viewers who also watched GSN in the fourth quarter of 2010):
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.
 - [REDACTED] out of 96 for the female 25-54 demographic.
- GSN's secondary duplication rank from the perspective of WE tv (i.e., the percentage of the other (secondary) network's viewers who also watched WE tv in the fourth quarter of 2010):
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.

⁷³ Singer Report ¶ 33.

⁷⁴ [REDACTED]

- [REDACTED] out of 96 for the female 25-54 demographic.
- GSN's both duplication rank from the perspective of WE tv:
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.
 - [REDACTED] out of 96 for the female 25-54 demographic.
- WE tv's primary duplication rank from the perspective of GSN (i.e., the percentage of GSN viewers who also watched WE tv in the fourth quarter of 2010):
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.
 - [REDACTED] out of 96 for the female 25-54 demographic.
- WE tv's secondary duplication rank from the perspective of GSN (i.e., the percentage of the other (secondary) network's viewers who also watched GSN in the fourth quarter of 2010) :
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.
 - [REDACTED] out of 96 for the female 25-54 demographic.
- WE tv's both duplication rank from the perspective of GSN :
 - [REDACTED] out of 96 for the persons 18+ demographic.
 - [REDACTED] out of 96 for the female 18+ demographic.
 - [REDACTED] out of 96 for the persons 25-54 demographic.
 - [REDACTED] out of 96 for the female 25-54 demographic.

69. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. [REDACTED]

[REDACTED]⁷⁶ [REDACTED] Further,
as I discuss earlier, the Nielsen duplication report data should be viewed with caution because
these reports apply a relatively low threshold for what constitutes viewership of a network. As I
already noted above, I understand that the Nielsen duplication reports count viewers as having
watched a program or network if the viewer watched that program or network for at least six
minutes during the period examined by the report. Thus, the Nielsen duplication reports provide
a very weak measure of viewer audience overlap. [REDACTED]

[REDACTED]

[REDACTED]

71. [REDACTED]

[REDACTED]

⁷⁵ [REDACTED]

[REDACTED]

[REDACTED]

⁷⁶ The same critique applies to the viewer audience duplication analysis presented by Mr. Brooks in his report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72. In addition to his analysis of viewer audience overlap for total viewership of GSN, Dr. Singer also examines viewer audience overlap for seven GSN programs: *Baggage*, *The Newlywed Game*, *Love Triangle*, *Deal or No Deal*, *Family Feud*, *Match Game*, and *Catch 21*.⁷⁸ Dr. Singer's analysis of the viewer audience overlap for the seven GSN programs suffers an additional methodological flaw (besides those already identified above). Dr. Singer examines the viewer audience duplication of the seven GSN programs for only 16 other networks (and only 15 for his analysis of 2010 data).⁷⁹ In contrast, Dr. Singer's analysis of overall GSN viewer audience duplication examined 85 networks besides GSN.⁸⁰ Thus, Dr. Singer excludes dozens of networks from this analysis of viewer overlap with these seven programs so that WE tv's duplication rank with respect to these programs would likely be significantly lower if all the networks were included. Furthermore, Dr. Singer's audience duplication analysis of the seven GSN programs considers viewership over a two-quarter period (in contrast to the one quarter

⁷⁷ [REDACTED]

⁷⁸ Singer Report ¶ 33.

⁷⁹ Singer Report ¶ 37.

⁸⁰ Singer Report ¶ 33.

period for his analysis of overall GSN viewership). Examining viewer audience duplication over a two-quarter period further weakens the standard for what constitutes viewership overlap.⁸¹

73. In sum, Dr. Singer's viewership overlap analysis is unreliable and by no means indicates that WE tv and GSN compete for viewers in any significant way.

B. There Is No Significant Competition for Advertisers between GSN and WE tv.⁸²

74. If GSN and WE tv competed significantly for advertisers, advertisers would view the two networks as substitutes and reducing the supply of advertising on GSN would increase the demand for WE tv advertising. Such significant competition between WE tv and GSN for advertisers would also likely be reflected in WE tv's advertising rates, which would be significantly constrained by GSN's advertising rates, and vice versa. The degree to which WE tv's advertising rates face a pricing constraint from GSN may be relevant to assessing Cablevision's incentives to discriminate against GSN. If WE tv's advertising faced a significant pricing constraint from GSN, then restraining GSN's ability to provide advertising services may benefit WE tv by enabling WE tv to charge higher advertising rates. For this reason, I analyze competition for advertisers between WE tv and GSN from the perspective of constraints facing WE tv's advertising prices.⁸³ The analyses I present show an absence of any significant

⁸¹ I understand that the Nielsen duplication report data that Dr. Singer uses in his analysis of the seven GSN programs count instances of viewer "duplication" (or overlap) where a viewer watched a GSN program for at least six minutes over a six-month period and watched another networks for at least six minutes over the same six-month period. Such a test is an extremely low standard for what constitutes viewership overlap.

⁸² As neither Dr. Singer nor Mr. Brooks presents any evidence of competition for advertising customers between GSN and Wedding Central, I focus my discussion in this section on WE tv and GSN.

⁸³ Nonetheless, I reach similar conclusions if I analyze competition for advertising from the perspective of constraints facing GSN's advertising pricing.

competition for advertisers between WE tv and GSN, from an economic perspective. Below, I describe my analyses and the foundations for my conclusion regarding competition for advertisers between WE tv and GSN.

Significant Differences in Viewer Demographics Between WE tv and GSN Are Inconsistent with Significant Competition for Advertisers Between the Two Networks

75. A key feature of competition between networks for advertisers is the degree to which networks have similar viewer demographics. Companies that look to reach a certain audience demographic are likely to view networks with very similar viewer demographics as close substitutes for their advertising expenditures. Likewise, such advertisers are likely to view networks with dissimilar viewer demographics as not particularly close substitutes. The degree to which advertisers view networks as substitutes for advertising expenditures provides a measure of competition for advertisers between the networks. My analysis shows WE tv and GSN are quite dissimilar in their viewer demographics. The significant differences in viewer demographics between WE tv and GSN suggest that advertisers are unlikely to view the two networks as close substitutes for advertising expenditures. Consequently, the differences in viewer demographics indicate an absence of significant competition for advertisers between WE tv and GSN.

76. I analyze network viewer demographics using the Nielsen full-day national network market breaks data for the fourth quarter of 2010 (the last full quarter prior to GSN's retiering).⁸⁴ The Nielsen dataset breaks down the viewership of national cable networks by

⁸⁴ Nielsen Total Day Marketbreaks 4Q 2010 (9/10/2010 – 12/26/2010, Live+SD, all cable networks) ("TDMarketbreaks_4QTR_All_Cable_REV_.xls").

viewer demographics, such as age, gender, occupation type, education level, race, labor force participation, type of residence, and residence location. I use this dataset to calculate, for each demographic group and network, the percentage of the network's total viewership that the demographic group represents. I analyze these statistics to measure the differences in networks' viewer demographics.

77. Table 16 below compares the viewer demographics statistics for WE tv and GSN. The analysis only considers viewership by persons who are at least 18 years old. Table 16 indicates that in the fourth quarter of 2010 there were significant differences in viewer demographics between WE tv and GSN. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸⁵ [REDACTED]

[REDACTED]

[REDACTED]⁸⁶ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

⁸⁵ [REDACTED] [REDACTED]
[REDACTED]

⁸⁶ I measure the female viewership share as the female viewers' share of total network viewership.

[REDACTED]

[REDACTED]⁸⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸⁷ [REDACTED]
[REDACTED]

⁸⁸ See *infra*, ¶ 80.

79.

[REDACTED]

80.

[REDACTED]

89

[REDACTED]

90

[REDACTED]

	2019	2020
1. Overall	100%	100%
2. Category A	85%	85%
3. Category B	70%	70%
4. Category C	55%	55%
5. Category D	40%	40%
6. Category E	25%	25%
7. Category F	10%	10%
8. Category G	5%	5%
9. Category H	2%	2%
10. Category I	1%	1%
11. Category J	0%	0%
12. Category K	0%	0%
13. Category L	0%	0%
14. Category M	0%	0%
15. Category N	0%	0%
16. Category O	0%	0%
17. Category P	0%	0%
18. Category Q	0%	0%
19. Category R	0%	0%
20. Category S	0%	0%
21. Category T	0%	0%
22. Category U	0%	0%
23. Category V	0%	0%
24. Category W	0%	0%
25. Category X	0%	0%
26. Category Y	0%	0%
27. Category Z	0%	0%
28. Category AA	0%	0%
29. Category AB	0%	0%
30. Category AC	0%	0%
31. Category AD	0%	0%
32. Category AE	0%	0%
33. Category AF	0%	0%
34. Category AG	0%	0%
35. Category AH	0%	0%
36. Category AI	0%	0%
37. Category AJ	0%	0%
38. Category AK	0%	0%
39. Category AL	0%	0%
40. Category AM	0%	0%
41. Category AN	0%	0%
42. Category AO	0%	0%
43. Category AP	0%	0%
44. Category AQ	0%	0%
45. Category AR	0%	0%
46. Category AS	0%	0%
47. Category AT	0%	0%
48. Category AU	0%	0%
49. Category AV	0%	0%
50. Category AW	0%	0%
51. Category AX	0%	0%
52. Category AY	0%	0%
53. Category AZ	0%	0%
54. Category BA	0%	0%
55. Category BB	0%	0%
56. Category BC	0%	0%
57. Category BD	0%	0%
58. Category BE	0%	0%
59. Category BF	0%	0%
60. Category BG	0%	0%
61. Category BH	0%	0%
62. Category BI	0%	0%
63. Category BJ	0%	0%
64. Category BK	0%	0%
65. Category BL	0%	0%
66. Category BM	0%	0%
67. Category BN	0%	0%
68. Category BO	0%	0%
69. Category BP	0%	0%
70. Category BQ	0%	0%
71. Category BR	0%	0%
72. Category BS	0%	0%
73. Category BT	0%	0%
74. Category BU	0%	0%
75. Category BV	0%	0%
76. Category BW	0%	0%
77. Category BX	0%	0%
78. Category BY	0%	0%
79. Category BZ	0%	0%
80. Category CA	0%	0%
81. Category CB	0%	0%
82. Category CC	0%	0%
83. Category CD	0%	0%
84. Category CE	0%	0%
85. Category CF	0%	0%
86. Category CG	0%	0%
87. Category CH	0%	0%
88. Category CI	0%	0%
89. Category CJ	0%	0%
90. Category CK	0%	0%
91. Category CL	0%	0%
92. Category CM	0%	0%
93. Category CN	0%	0%
94. Category CO	0%	0%
95. Category CP	0%	0%
96. Category CQ	0%	0%
97. Category CR	0%	0%
98. Category CS	0%	0%
99. Category CT	0%	0%
100. Category CU	0%	0%
101. Category CV	0%	0%
102. Category CW	0%	0%
103. Category CX	0%	0%
104. Category CY	0%	0%
105. Category CZ	0%	0%
106. Category DA	0%	0%
107. Category DB	0%	0%
108. Category DC	0%	0%
109. Category DD	0%	0%

81. [REDACTED]

- [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED]
[REDACTED]

These differences in viewer demographics between WE tv and GSN highlighted by my analysis indicate that these two networks appeal to different viewer audiences and thus different advertisers.

82. Another useful way to examine networks' viewer demographics is by depicting networks in a scatter plot that shows two demographic attributes at the same time. I present such scatter plots in Figures E20 through E29 in Appendix E. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 91

91 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. The distances between networks depicted in the two-dimensional scatter plots can be extended to multiple dimensions of viewer demographic attributes. That is, one can calculate distances between networks in viewer demographics based on multiple viewer demographic attributes. I calculate such distances between networks' viewer demographics by applying the method used by Dr. Singer in his report to make similar calculations.⁹² This method uses the Mahalanobis distance to calculate the differences between networks' viewer demographics for any given set of viewer demographic attributes. I calculate the Mahalanobis distance between networks based on the following ten viewer demographic attributes: (1) viewer median age; (2) female share of viewership; (3) median viewer income; (4) viewer household home ownership share; (5) viewer head of household white collar occupation share; (6) viewer head of household not in labor force share; (7) viewer head of household with at least four years of college share; (8) share of viewers who reside in counties of size A; (9) share of viewership by viewer households with at least three people; and (10) viewer head of household white share. I chose these attributes to cover a wide range of viewer demographic statistics that may be applied to cable networks.⁹³ Tables 17 and 18 below show the viewer demographics Mahalanobis distances from WE tv and GSN, respectively. [REDACTED]

[REDACTED]

[REDACTED]

84. [REDACTED]

[REDACTED]

⁹² Singer Report ¶¶ 43- 45.

⁹³ The results of my analysis do not significantly change when I calculate distances for alternative sets of viewer demographic attributes.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

94

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85. Importantly, the Mahalanobis distance measure for various other network combinations show that they are close in Mahalanobis distance, as one would expect:

- The Mahalanobis distance between CNN and Fox News was [REDACTED]. CNN ranked [REDACTED] in distance from Fox News, and Fox News ranked [REDACTED] in distance from CNN.
- The Mahalanobis distance between VH1 and MTV was [REDACTED]. VH1 ranked [REDACTED] in distance from MTV, and MTV ranked [REDACTED] in distance from VH1.

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- The Mahalanobis distance between Nickelodeon and Disney was [REDACTED]. Disney ranked [REDACTED] in distance from Nickelodeon, and Nickelodeon ranked [REDACTED] in distance from Disney.
- The Mahalanobis distance between ESPN and ESPN2 was [REDACTED]. ESPN2 ranked [REDACTED] in distance from ESPN, and ESPN ranked [REDACTED] in distance from ESPN2.
- The Mahalanobis distance between TNT and USA was [REDACTED]. TNT ranked [REDACTED] in distance from USA, and USA ranked [REDACTED] in distance from TNT.
- In contrast, the Mahalanobis distance between WE tv and GSN was [REDACTED]. GSN ranked [REDACTED] in distance from WE tv, and WE tv ranked [REDACTED] in distance from GSN.

86. [REDACTED]

[REDACTED] These results corroborate my overall finding of significant differences between WE tv and GSN in terms of viewer demographics. The relatively large differences in viewer demographics between WE tv and GSN further indicate that WE tv and GSN did not likely compete for advertisers in a significant way prior to GSN's retiering.

87. Dr. Singer also calculates the Mahalanobis distance between WE tv's and GSN's viewer demographics.⁹⁵ Dr. Singer finds that WE tv ranked [REDACTED] in terms of viewer demographic distance from GSN.⁹⁶ In contrast, my analysis shows that WE tv ranked [REDACTED] in terms of distance from GSN. There are several reasons for the differences between our

⁹⁵ Singer Report ¶¶ 41 - 45.

⁹⁶ Singer Report ¶¶ 45.

results. Dr. Singer considers only 38 networks out of 95 networks for which demographic data are available in the fourth quarter of 2011.⁹⁷ My analysis examines the demographics for all 95 networks. Many of the networks excluded from Dr. Singer’s demographic distance analysis are the very networks that my analysis shows are closer to GSN in terms of viewer demographics than WE tv. Such networks include: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, Dr. Singer’s limiting his distance analysis to the 38 networks causes WE tv and GSN to appear much closer to each other in terms of viewer demographics than they really are.

88. Another reason for the difference between Dr. Singer’s and my viewer demographic distance results is Dr. Singer’s treatment of viewer age. Dr. Singer does not consider viewer age in his distance calculations, but instead looks at a combination of head of household age and size of household. Head of household age is not the same as viewer age. As Dr. Singer himself suggests, advertisers are likely to focus on a specific age/gender groups in choosing networks for their advertisements.⁹⁸ It is therefore puzzling why Dr. Singer would exclude viewer age from the Mahalanobis distance calculations. Moreover, Dr. Singer’s analysis does not even consider head of household age as a standalone demographic attribute but instead combines it with household size. This has the effect of further reducing the effect of viewer age in the comparison of viewer demographics. [REDACTED]

⁹⁷ See “GSN_CVC_00154869 - HIGHLY CONFIDENTIAL.xlsx.”

⁹⁸ Singer Report ¶ 41.

[REDACTED]

89. Dr. Singer also excludes other relevant demographic attributes from his distance calculations. Such demographic attributes include viewer household home ownership share, median viewer income, viewer head of household not in labor force share, and the share of viewers who reside in urban (or rural) counties. [REDACTED]

[REDACTED]

90. Finally, Dr. Singer's analysis ranks networks in terms of demographic distance from GSN rather than from WE tv. [REDACTED]

[REDACTED]

■

Table 17. Viewer Demographic Mahalanobis Distance from WE tv



Table 18. Viewer Demographic Mahalanobis Distance from GSN



Large Differences in Average Advertising Rates between WE tv and GSN Indicate Significant Difference in Viewer Demographics Between the Two Networks

91. The differences in the viewer demographics are also likely reflected in the average advertising rates on the two networks. Table 19 shows the average advertising rates for cable networks in 2010. The data source for the average advertising rates is SNL Kagan.⁹⁹ The advertising rates in Table 19 are measured in terms of cost per one thousand viewers reached (CPM).¹⁰⁰ The data in Table 19 indicate that WE tv's average CPM was [REDACTED] and that WE tv ranked [REDACTED] among cable networks in CPM in 2010. The data also indicate that GSN's average CPM was [REDACTED] and that GSN ranked [REDACTED] among cable networks in CPM in 2010. Thus, according to the SNL Kagan data, WE tv's average advertising rate in 2010

[REDACTED]

[REDACTED]

[REDACTED]¹⁰¹

⁹⁹ Dr. Singer has relied on SNL Kagan data for his previous analyses. In my analysis, I assume that SNL Kagan applies a consistent methodology for estimating network attributes across programming channels, so that, to the extent there exists a bias in the SNL Kagan's estimates of network attributes, the bias is consistent across networks.

¹⁰⁰ SNL Kagan TV Networks Summary Definitions.

¹⁰¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Table 19. Average CPM - Basic Cable Networks (2010)

[Redacted Table Content]

Absence of Significant Viewer Audience Overlap Between WE tv and GSN Suggests Limited Competition for Advertisers Between the Two Networks

92. Another important factor to consider in analyzing competition for advertisers between networks is viewer audience overlap between the networks. WE tv's advertising rates may face a significant pricing constraint from GSN if there is a sufficiently large population of advertisers who are looking to target WE tv viewers with their advertising messages *and* if there are also very few economic alternatives to reaching these viewers other than through advertising on GSN. The analysis that I present above shows that there was relatively little viewer audience overlap between WE tv and GSN. Therefore, by advertising on WE tv and GSN, advertisers largely reached different audiences.¹⁰² For this reason, advertisers were unlikely to have viewed advertising on GSN as a substitute for advertising on WE tv.¹⁰³ Because there was no significant viewer audience overlap between WE tv and GSN, WE tv's advertising rates were unlikely to have been constrained by GSN's advertising.¹⁰⁴

93. The analysis I present above shows why advertising on GSN was unlikely to have been an effective substitute for reaching WE tv viewers compared with advertising directly on WE tv. [REDACTED]

[REDACTED]

[REDACTED]

¹⁰² See *supra*, ¶¶ 50-62.

¹⁰³ Because of the limited viewer audience overlap between WE tv and GSN, an increase in GSN advertising rates is unlikely to increase the marginal value of advertising on WE tv. Thus, whether or not a particular company advertises on GSN is unlikely to affect the value to that company of advertising on WE tv.

¹⁰⁴ I assume that advertisers do not generally face binding budget constraints.

¹⁰⁵ ■ Thus, advertising on GSN was unlikely to have been an effective means of reaching a large share of WE tv viewers.

94.

106

95. Although it is useful to consider advertisers' options for reaching WE tv viewers, advertisers are likely to target a wider audience of viewers, which may include both WE tv and GSN viewers. Advertisers may consider a broad set of networks for reaching the target viewers. Such networks may include WE tv, GSN, and many other networks. [REDACTED]

WE tv's and GSN's small

¹⁰⁵ See Table 10.

¹⁰⁶ It is also important to note that certain advertisers may also view print, radio, direct mail, online, product placement, event sponsorship, naming rights, and other media as substitutes for advertising on television. If these additional advertising options are reasonable substitutes for advertising expenditures, it is even more unlikely that GSN did, or could reasonably have, a significant effect on the prices or quantities of advertising purchased on WE tv.

¹⁰⁷ Source: SNL Kagan data.

shares of total industry advertising suggest that GSN’s advertising is unlikely to provide a significant constraint on WE tv’s advertising rates unless a sufficiently large population of advertisers target viewers of both networks (and no or few other networks). Given all of these facts, it is unlikely that WE tv and GSN competed for advertisers in any significant way prior to GSN’s retiering by Cablevision.

WE tv Documents Indicate Absence of Significant Competition for Advertisers Between GSN and WE tv

96. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰⁸ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰⁹ [REDACTED]

[REDACTED]

[REDACTED]

¹⁰⁸ [REDACTED]

¹⁰⁹ Declaration of Carole Smith ¶ 3 (footnote omitted).

Dr. Singer’s Advertiser Overlap Analysis Offers No Reliable Evidence of Significant Competition for Advertisers Between WE tv and GSN

97. Dr. Singer also claims that his analysis demonstrates that “a significant percentage of WE tv’s largest advertising customers overlap with GSN’s advertising customers.”¹¹⁰ [REDACTED]

[REDACTED]

[REDACTED]¹¹¹ [REDACTED]

[REDACTED]

[REDACTED]¹¹² Dr. Singer argues that such advertising “overlaps” imply significant competition for advertisers between WE tv and GSN. As I explain below, such advertising “overlaps” are not at all indicative of significant competition for advertising customers.

98. When two networks compete for advertisers, the advertisers view the networks as substitute suppliers of advertising services and are choosing between the networks in making their decisions about which networks to display their advertising. The fact that networks have common advertisers is not indicative of whether advertisers are choosing between the networks for their advertising messages. The WE tv–GSN overlap advertisers identified by Dr. Singer include [REDACTED]

[REDACTED]

[REDACTED]

These advertisers have very large advertising budgets for many different products and advertise

¹¹⁰ Singer Report ¶ 46.

¹¹¹ Singer Report ¶ 46.

¹¹² Singer Report ¶ 46.

extensively on numerous cable networks, broadcast networks, and other advertising media.¹¹³ The notion that these advertisers are choosing solely (or even primarily) between WE tv and GSN for their advertisements is simply implausible.

99. I examine companies' advertising expenditures on cable networks using the Nielsen Ad*Views 2010 data. The Ad*Views data track companies' purchases of advertising on individual cable networks. My analysis of companies' advertising expenditures on cable networks shows that companies generally purchase advertising across a large number of networks. Further, my analysis shows that WE tv and GSN account for very small shares of advertising expenditures, even among the largest advertisers on the two networks. Thus, the fact that companies advertise on both WE tv and GSN in no way implies that WE tv and GSN are significant competitors for advertisers.

100. My analysis of the Ad*Views firm-level advertising data is summarized in Tables 20 and 21 below. Table 20 shows WE tv's [REDACTED] advertisers by advertising expenditure in 2010.¹¹⁴ Consistent with Dr. Singer's analysis, Table 20 shows that [REDACTED] of WE tv's [REDACTED] advertisers also advertised on GSN in 2010. Out of the [REDACTED] WE tv advertisers, [REDACTED] had some advertising expenditures on GSN in 2010. However, several of the [REDACTED] "overlap" advertisers have very modest GSN advertising expenditures. For example,

[REDACTED]

¹¹³ [REDACTED]

¹¹⁴ The table shows advertising by parent company advertisers rather than subsidiaries to be consistent with Dr. Singer's analysis. (Singer Report ¶ 46.) For example, Table 5 of Dr. Singer's Report lists Berkshire Hathaway rather than its subsidiary Geico as the advertiser.

[REDACTED] In fact, out of the top 40 WE tv advertisers, only [REDACTED] spent more than [REDACTED] in advertising on GSN in 2010.

101. Table 20 also shows that companies spread their advertising dollars across many cable networks. For example, ██████████ 2010 advertising expenditures were ██████████ on WE tv, ██████████ on GSN, and about ██████████ across all the 99 cable networks in the Ad*Views data. ██████████ was WE tv's top advertiser in 2010 in terms of total advertising expenditure, but ██████████ also purchased advertising on ██████████ other cable networks in 2010 (out of the 99 cable networks in the Ad*Views data). WE tv and GSN accounted for only ██████████ and ██████████ percent shares, respectively, of ██████████ } 2010 cable network advertising expenditures.¹¹⁵ The overall WE tv and GSN shares of cable network advertising revenue in 2010 (for the 99 networks in Ad*Views data) were ██████████ and ██████████, respectively. Thus, the fact that ██████████ advertised on both WE tv and GSN in 2010 does not in any way suggest a significant level of competition between WE tv and GSN for ██████████ advertising expenditures. The ██████████ WE tv advertisers on average purchased advertising on about ██████████ networks in 2010 (out of the 99 cable networks in the Ad*Views data).¹¹⁶ WE tv and GSN accounted for only ██████████ and ██████████ percent shares, respectively, of the 2010 cable network expenditures of the ██████████ WE tv advertisers in Table 20.¹¹⁷

102. My analysis of GSN's [REDACTED] advertisers likewise shows that companies spread their advertising dollars across many cable networks. Table 21 shows that the [REDACTED]

115

116

¹¹⁷ Based on the 99 cable networks in the Ad*Views 2010 data.

GSN advertisers (based on the 2010 advertising expenditure) on average purchased advertising on about [REDACTED] networks in 2010 (out of the 99 cable networks in the Ad*Views data).¹¹⁸ GSN and WE tv also accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of the 2010 cable network expenditures of the [REDACTED] GSN advertisers in Table 21.¹¹⁹ Thus, the advertising expenditures data of both the [REDACTED] WE tv advertisers and [REDACTED] GSN advertisers provide no evidence of significant competition for advertisers between WE tv and GSN.

103. Dr. Singer also examines overlap between WE tv and GSN based on advertising expenditure on brands. Companies may own multiple brands so that a firm that advertises on both WE tv and GSN may not advertise the same brands on the two networks. Thus, brand-level advertising overlap may be lower than the firm-level advertising overlap. Dr. Singer finds that “Brands that advertise on GSN account for [REDACTED] percent of WE tv’s revenue from its [REDACTED] advertising customers.”¹²⁰ Based on this finding, Dr. Singer concludes that “This significant overlap at the brand level suggests that advertisers perceive that they are reaching a similar demographic on both networks.”¹²¹

104. Dr. Singer’s analysis of brand-level overlaps between WE tv and GSN is misleading. In fact, my analysis of the Ad*Views brand-level advertising data indicates that there is relatively little overlap between top brands advertised on WE tv and GSN. I analyze the

¹¹⁸ [REDACTED]

¹¹⁹ Based on the 99 cable networks in the Ad*Views 2010 data.

¹²⁰ Singer Report ¶ 47.

¹²¹ Singer Report ¶ 47.

Ad*Views brand-level advertising data for the 2010 period.¹²² My analysis shows that there are only [REDACTED] brands that are on both the [REDACTED] WE tv and [REDACTED] GSN list of brands, ranked by advertising expenditure on the networks during 2010. The five WE tv – GSN [REDACTED] overlap brands are: [REDACTED]

The limited overlap of the [REDACTED] brand lists suggests that top brands advertised on WE tv have relatively little advertising on GSN, and vice-versa. My analysis shows that the median advertising expenditure by a [REDACTED] WE tv brand in 2010 was [REDACTED] in advertising purchased on WE tv and only [REDACTED] in advertising purchased on GSN.¹²³ Likewise, my analysis shows that the median advertising expenditure in 2010 by a [REDACTED] GSN brand was [REDACTED] in advertising purchased on GSN and only [REDACTED] in advertising purchased on WE tv.¹²⁴ Thus, there does not appear significant brand-level advertising overlap between WE tv and GSN.

105. My analysis of Ad*Views brand-level advertising data also shows that brands spread their advertising dollars across many cable networks. [REDACTED] was WE tv's top brand in 2010 in terms of total advertising expenditure. But [REDACTED] also advertised on [REDACTED] other cable networks in 2010 (out of the 99 cable networks in the Ad*Views data), including [REDACTED]

¹²² Dr. Singer's advertiser overlap analysis is based on the July 2010-July 2011 period. The selection of the period for the analysis does not appear to have a significant effect on the results.

¹²³ Data source: Ad*Views 2010 data.

¹²⁴ Data source: Ad*Views 2010 data.

[REDACTED]

[REDACTED]

[REDACTED] WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of total 2010 cable network advertising purchases for the [REDACTED] brand.¹²⁵ Thus, the fact that [REDACTED] advertising was purchased on both WE tv and GSN in 2010 does not in any way indicate a significant level of competition between WE tv and GSN for [REDACTED] advertising; indeed, it is highly unlikely to be the case that advertisers view all these networks as “reaching a similar demographic.”

106. Moreover, the [REDACTED] WE tv advertising brands had, on average, advertising purchases on about [REDACTED] cable networks in 2010 (out of the 99 cable networks in the Ad*Views data).¹²⁶ WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of 2010 cable network advertising purchases by WE tv’s [REDACTED] advertising brands.¹²⁷

107. Dr. Singer also claims that eight brands [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] “dedicated more than 10 percent of their respective total

¹²⁵ Based on the 99 cable networks in the Ad*Views 2010 data.

¹²⁶ [REDACTED]

¹²⁷ Based on the 99 cable networks in the Ad*Views 2010 data.

advertising budgets on *both* WE tv and GSN in 2010.”¹²⁸ However, these brands appear to be insignificant purchasers of advertising on cable networks. For example, [REDACTED] purchased about [REDACTED] in advertising in 2010 across *all* cable networks. [REDACTED] had about [REDACTED] in advertising purchases in 2010 across *all* cable networks. [REDACTED] had about [REDACTED] in advertising purchases in 2010 across all cable networks and spread those purchases across [REDACTED] cable networks (including [REDACTED] [REDACTED]). Thus, the eight brands discussed by Dr. Singer do not provide evidence of significant competition for advertisers between WE tv and GSN. If anything, the brands illustrate an absence of significant competition for advertisers between WE tv and GSN.

¹²⁸ Singer Report ¶ 48.

	1	2	3	4	5	6
1	1	1	1	1	1	1
2	1	1	1	1	1	1
3	1	1	1	1	1	1
4	1	1	1	1	1	1
5	1	1	1	1	1	1
6	1	1	1	1	1	1
7	1	1	1	1	1	1
8	1	1	1	1	1	1
9	1	1	1	1	1	1
10	1	1	1	1	1	1
11	1	1	1	1	1	1
12	1	1	1	1	1	1
13	1	1	1	1	1	1
14	1	1	1	1	1	1
15	1	1	1	1	1	1
16	1	1	1	1	1	1
17	1	1	1	1	1	1
18	1	1	1	1	1	1
19	1	1	1	1	1	1
20	1	1	1	1	1	1
21	1	1	1	1	1	1
22	1	1	1	1	1	1
23	1	1	1	1	1	1
24	1	1	1	1	1	1
25	1	1	1	1	1	1
26	1	1	1	1	1	1
27	1	1	1	1	1	1
28	1	1	1	1	1	1
29	1	1	1	1	1	1
30	1	1	1	1	1	1
31	1	1	1	1	1	1
32	1	1	1	1	1	1
33	1	1	1	1	1	1
34	1	1	1	1	1	1
35	1	1	1	1	1	1
36	1	1	1	1	1	1
37	1	1	1	1	1	1
38	1	1	1	1	1	1
39	1	1	1	1	1	1
40	1	1	1	1	1	1
41	1	1	1	1	1	1
42	1	1	1	1	1	1
43	1	1	1	1	1	1
44	1	1	1	1	1	1
45	1	1	1	1	1	1
46	1	1	1	1	1	1
47	1	1	1	1	1	1
48	1	1	1	1	1	1
49	1	1	1	1	1	1
50	1	1	1	1	1	1
51	1	1	1	1	1	1
52	1	1	1	1	1	1
53	1	1	1	1	1	1
54	1	1	1	1	1	1
55	1	1	1	1	1	1
56	1	1	1	1	1	1
57	1	1	1	1	1	1
58	1	1	1	1	1	1
59	1	1	1	1	1	1
60	1	1	1	1	1	1
61	1	1	1	1	1	1
62	1	1	1	1	1	1
63	1	1	1	1	1	1
64	1	1	1	1	1	1
65	1	1	1	1	1	1
66	1	1	1	1	1	1
67	1	1	1	1	1	1
68	1	1	1	1	1	1
69	1	1	1	1	1	1
70	1	1	1	1	1	1
71	1	1	1	1	1	

Table 21. GSN Top 40 Parent Company Advertisers (2010)

	1990	1995	2000	2005	2010	2015
1. U.S. military spending	1.0	1.0	1.0	1.0	1.0	1.0
2. U.S. military aid to Israel	0.5	0.5	0.5	0.5	0.5	0.5
3. U.S. military aid to Egypt	0.4	0.4	0.4	0.4	0.4	0.4
4. U.S. military aid to Saudi Arabia	0.3	0.3	0.3	0.3	0.3	0.3
5. U.S. military aid to Jordan	0.2	0.2	0.2	0.2	0.2	0.2
6. U.S. military aid to Pakistan	0.1	0.1	0.1	0.1	0.1	0.1
7. U.S. military aid to Turkey	0.1	0.1	0.1	0.1	0.1	0.1
8. U.S. military aid to Greece	0.1	0.1	0.1	0.1	0.1	0.1
9. U.S. military aid to South Korea	0.1	0.1	0.1	0.1	0.1	0.1
10. U.S. military aid to Japan	0.1	0.1	0.1	0.1	0.1	0.1
11. U.S. military aid to Taiwan	0.1	0.1	0.1	0.1	0.1	0.1
12. U.S. military aid to South Vietnam	0.1	0.1	0.1	0.1	0.1	0.1
13. U.S. military aid to North Vietnam	0.1	0.1	0.1	0.1	0.1	0.1
14. U.S. military aid to Laos	0.1	0.1	0.1	0.1	0.1	0.1
15. U.S. military aid to Cambodia	0.1	0.1	0.1	0.1	0.1	0.1
16. U.S. military aid to Thailand	0.1	0.1	0.1	0.1	0.1	0.1
17. U.S. military aid to Philippines	0.1	0.1	0.1	0.1	0.1	0.1
18. U.S. military aid to Indonesia	0.1	0.1	0.1	0.1	0.1	0.1
19. U.S. military aid to Malaysia	0.1	0.1	0.1	0.1	0.1	0.1
20. U.S. military aid to Singapore	0.1	0.1	0.1	0.1	0.1	0.1
21. U.S. military aid to Australia	0.1	0.1	0.1	0.1	0.1	0.1
22. U.S. military aid to New Zealand	0.1	0.1	0.1	0.1	0.1	0.1
23. U.S. military aid to Canada	0.1	0.1	0.1	0.1	0.1	0.1
24. U.S. military aid to Mexico	0.1	0.1	0.1	0.1	0.1	0.1
25. U.S. military aid to Central America	0.1	0.1	0.1	0.1	0.1	0.1
26. U.S. military aid to Caribbean	0.1	0.1	0.1	0.1	0.1	0.1
27. U.S. military aid to Africa	0.1	0.1	0.1	0.1	0.1	0.1
28. U.S. military aid to Europe	0.1	0.1	0.1	0.1	0.1	0.1
29. U.S. military aid to Asia	0.1	0.1	0.1	0.1	0.1	0.1
30. U.S. military aid to Oceania	0.1	0.1	0.1	0.1	0.1	0.1
31. U.S. military aid to Antarctica	0.1	0.1	0.1	0.1	0.1	0.1
32. U.S. military aid to Arctic	0.1	0.1	0.1	0.1	0.1	0.1
33. U.S. military aid to South America	0.1	0.1	0.1	0.1	0.1	0.1
34. U.S. military aid to Middle East	0.1	0.1	0.1	0.1	0.1	0.1
35. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
36. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
37. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
38. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
39. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
40. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
41. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
42. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
43. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
44. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
45. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
46. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
47. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
48. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
49. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
50. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
51. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
52. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
53. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
54. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
55. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
56. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
57. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
58. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
59. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
60. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
61. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
62. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
63. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
64. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
65. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
66. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
67. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
68. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
69. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
70. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
71. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
72. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
73. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
74. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
75. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
76. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
77. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
78. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
79. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
80. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
81. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
82. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
83. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
84. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
85. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
86. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
87. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
88. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
89. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
90. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
91. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
92. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
93. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
94. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
95. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
96. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
97. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
98. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
99. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
100. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
101. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
102. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
103. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
104. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
105. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
106. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
107. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
108. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
109. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
110. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
111. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
112. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
113. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
114. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
115. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
116. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
117. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
118. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
119. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
120. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
121. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
122. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
123. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
124. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
125. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
126. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
127. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
128. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
129. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
130. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
131. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
132. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
133. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
134. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
135. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
136. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
137. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
138. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
139. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
140. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
141. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
142. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
143. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
144. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
145. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
146. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
147. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
148. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
149. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
150. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
151. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
152. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
153. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
154. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
155. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
156. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
157. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
158. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
159. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
160. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
161. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
162. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
163. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
164. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
165. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
166. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
167. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
168. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
169. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
170. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
171. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
172. U.S. military aid to Western Europe	0.1	0.1	0.1	0.1	0.1	0.1
173. U.S. military aid to Northern Europe	0.1	0.1	0.1	0.1	0.1	0.1
174. U.S. military aid to Southern Europe	0.1	0.1	0.1	0.1	0.1	0.1
175. U.S. military aid to Eastern Asia	0.1	0.1	0.1	0.1	0.1	0.1
176. U.S. military aid to Southern Asia	0.1	0.1	0.1	0.1	0.1	0.1
177. U.S. military aid to Southeast Asia	0.1	0.1	0.1	0.1	0.1	0.1
178. U.S. military aid to South Asia	0.1	0.1	0.1	0.1	0.1	0.1
179. U.S. military aid to Central Asia	0.1	0.1	0.1	0.1	0.1	0.1
180. U.S. military aid to Eastern Europe	0.1	0.1	0.1	0.1	0.1	0.1
181. U.S. military aid to Western Europe	0.1	0.1				

C. There Is No Significant Competition for Programming Rights Between GSN and WE tv¹²⁹

108. There may be significant competition between WE tv and GSN for programming rights if WE tv and GSN seek to acquire the same programming *and* if GSN's efforts to acquire programming rights cause WE tv to pay significantly higher prices for the programming content. If there were significant competition between WE tv and GSN for programming rights, Cablevision may have an incentive to discriminate against GSN as restraining GSN's ability to compete for programming rights may benefit WE tv. However, there is no evidence that I am aware of that WE tv and GSN compete for the same programming rights.

Dr. Singer's Analysis Provides No Reliable Evidence of Significant Competition for Programming Rights Between WE tv and GSN

109. Dr. Singer claims that "WE tv has competed directly with GSN for programming rights..."¹³⁰ However, Dr. Singer's evidence in support of this claim in no way demonstrates significant competition between WE tv and GSN for programming rights.

- Dr. Singer states that "GSN was optioning a project from author John Gray called *Divorce Rehab* that was pitched to WE tv and to GSN."¹³¹ But Dr. Singer does not offer any evidence that that WE tv and GSN actually competed for the John Gray project or that WE tv even expressed any interest in the project. [REDACTED]

¹²⁹ As neither Dr. Singer nor Mr. Brooks presents any evidence of competition for programming rights between GSN and Wedding Central, I focus my discussion in this section on WE tv and GSN.

¹³⁰ Singer Report ¶ 7.

¹³¹ Singer Report ¶ 50 (footnote omitted, emphasis in original).

¹³² Moreover, Dr. Singer’s statement about *Divorce Rehab* suggests that GSN is no longer pursuing the project.

- Dr. Singer claims that ¹³³ However, Dr. Singer offers no evidence that any of these shows were developed by either WE tv or GSN or that either network expressed any interest in developing the shows. He also does not present any evidence of the universe of shows pitched to WE tv – the few shows apparently pitched to both WE tv and GSN may represents a tiny fraction of the overall shows pitched to WE tv.
- Another example of “competition” for the “same programming rights” between WE tv and GSN cited by Dr. Singer is that Tammy Pescatelli appeared on a program shown on WE tv and “pitched” a project to GSN.¹³⁴ Again, this is not an example of competition between WE tv and GSN for the same programming content.

110. The evidence presented by Dr. Singer does not demonstrate *any* competition between WE tv and GSN for programming rights and certainly demonstrates no significant competition for those rights. In any case, Dr. Singer’s examples of “competition” between GSN and WE tv for the “same programming rights” appear to be inconsequential in terms of the value of such programming rights. The notion that Cablevision decided to carry GSN on a less penetrated tier just so that it could prevent GSN from purchasing projects with Tammy Pescatelli or John Gray is utterly implausible. In the end, there is no reliable basis whatsoever offered by

¹³² Declaration of Deirdre O’Hearn ¶ 6.

¹³³ Singer Report ¶ 50.

¹³⁴ Singer Report ¶¶ 49-50.

Dr. Singer for concluding that WE tv and GSN compete in any significant way for the same programming rights.

D. Cablevision Does Not Have Any Incentive To Engage in Discriminatory Carriage Conduct Against GSN.

111. Under standard economic theory, Cablevision could only plausibly have an incentive to discriminate against GSN in favor of its affiliated networks, WE tv and Wedding Central, if WE tv and Wedding Central faced significant pricing constraints by GSN. Thus, if the prices charged by WE tv or Wedding Central were not significantly constrained by GSN, WE tv or Wedding Central would obtain no benefit from reducing GSN's ability to compete. Such pricing constraints could only exist if WE tv and Wedding Central faced significant competition for viewers, advertisers, and/or programming content from GSN and no other network (or few other networks).¹³⁵ Therefore, if WE tv and GSN (or Wedding Central and GSN) do not (did not) significantly compete for viewers, advertisers, and/or programming content, and thus, the prices charged by WE tv and Wedding Central are not significantly constrained by GSN, WE tv and Wedding Central would obtain no benefit from Cablevision's retiering GSN, and Cablevision would have no incentive to discriminate against GSN in the carriage of the network.

112. The analysis I present above indicates that there is no significant competition between WE tv/Wedding Central and GSN for viewers, advertisers, or programming rights. Moreover, the analyses indicate that there are numerous networks that are closer competitors to WE tv than to GSN. Thus, to the extent there is any pricing constraint imposed by GSN, the

¹³⁵ Carlton, Dennis, "A General Analysis of Exclusionary Conduct and Refusal to Deal--Why Aspen and Kodak Are Misguided," *Antitrust Law Journal*, Vol. 68, 2001, pp. 659-683; and Whinston, Michael, "Tying, Foreclosure, and Exclusion," *American Economic Review*, Vol. 80, 1990, pp. 837-859.

degree of that pricing constraint would be negligible relative to the pricing constraint provided by other networks.

113. Because there is no credible evidence of meaningful competition between GSN and WE tv for viewers, advertising, and/or programming content (and likewise, because there is no evidence that GSN and Wedding Central competed in a significant way for viewers, advertising, and/or programming content prior to Wedding Central's demise), Cablevision's affiliated networks are highly unlikely to reap any benefits from Cablevision's retiering of GSN. This conclusion is validated by all of the analyses presented above.

IV. CABLEVISION'S DECISION TO RETIER GSN IS CONSISTENT WITH SOUND BUSINESS JUDGMENT

GSN's Retiering Was a Reasonable Business Strategy Unrelated to GSN's Affiliation

114. Cablevision's distribution of GSN on the S&E Tier is consistent with rational business conduct based on considerations unrelated to GSN's affiliation. Sound business analysis of network carriage by an MVPD must consider both the costs and benefits of distributing the network to subscribers. Broad distribution of GSN would lead to higher licensing costs for Cablevision.¹³⁶ The value to Cablevision from carrying GSN on more highly penetrated tiers is a function of a variety of factors, in particular whether the carriage can help Cablevision attract and retain subscribers. It would only be rational for Cablevision to incur the additional license fees to distribute GSN on highly penetrated tiers if the carriage generated significant net subscriber additions for Cablevision.

¹³⁶ [REDACTED]

115. My review of Cablevision’s decision to retier GSN indicates that Cablevision’s analysis appeared to be reasonable and consistent with sound economic analysis.¹³⁷ Contemporaneous documents shed light on factors considered by Cablevision’s management in making the decision to retier GSN. My review of those documents indicates that a number of factors entered into the GSN retiering decision, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴⁰ [REDACTED]

[REDACTED]

¹³⁷ For background on the Cablevision analysis, see Declaration of Thomas Montemagno ¶¶ 40-50.

¹³⁸ See CV-GSN 0293351.

¹³⁹ See, for example, CV-GSN 0294003.

¹⁴⁰ See CV-GSN 0375808 and CV-GSN 0367735.

[REDACTED]

[REDACTED]

117. [REDACTED]

[REDACTED]

[REDACTED]¹⁴¹ [REDACTED]

[REDACTED]

[REDACTED]¹⁴² [REDACTED]

[REDACTED]

[REDACTED]¹⁴³ [REDACTED]

[REDACTED]

[REDACTED]¹⁴⁴ [REDACTED]

[REDACTED]

[REDACTED]¹⁴⁵ [REDACTED]

[REDACTED]

¹⁴¹ CV-GSN 0367735.

¹⁴² [REDACTED]

¹⁴³ See *infra*, ¶¶ 125-129.

¹⁴⁴ [REDACTED]

¹⁴⁵ CV-GSN 0367735.

[REDACTED]

[REDACTED] 146

Post-Retiring Outcomes Validate Cablevision’s Retiring Decision

118. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 147 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 148 [REDACTED]

[REDACTED]

[REDACTED] 149 [REDACTED]

[REDACTED]

[REDACTED]

146 [REDACTED]
[REDACTED]
[REDACTED]

147 [REDACTED]
[REDACTED]

148 [REDACTED]
[REDACTED]

149 [REDACTED]

119. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 150 [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150 [REDACTED]

121. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 22. Churn Rates by GSN Viewership*

	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			
[REDACTED]			[REDACTED]

122. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 151 [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 23. GSN Share by Sports Tier Status

		[REDACTED]		[REDACTED]	
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]					
[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]					
[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]					
[REDACTED]					
[REDACTED]			[REDACTED]		[REDACTED]
[REDACTED]			[REDACTED]		[REDACTED]
[REDACTED]					
[REDACTED]			[REDACTED]		[REDACTED]
[REDACTED]			[REDACTED]		[REDACTED]
[REDACTED]					
[REDACTED]					

[REDACTED]

123. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

152

152

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 24. S&E Tier Add Rate*

[REDACTED]

124. [REDACTED]

153

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

153

[REDACTED]

[REDACTED]

154

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 155 [REDACTED]

[REDACTED]

[REDACTED]

Carriage of GSN on Less Penetrated Tiers is Consistent with Economic Efficiency

125. [REDACTED]

[REDACTED] I measure network viewer concentration as the network's share of viewership by top viewing households.¹⁵⁶ Thus, if a network is watched primarily by a relatively small number of high-intensity viewers of the network, the network is likely to have a relatively high viewer concentration. Conversely, if a network is watched by a relatively wide viewer audience, the

¹⁵⁵ [REDACTED]
[REDACTED]
[REDACTED] See GSN_CVC_00154095 and GSN_CVC_00154096.

¹⁵⁶ My viewer concentration measure is closely related to the concept of reach. Nielsen defines reach (in media ratings) as “the unduplicated number of individuals or households exposed to an advertising medium at least once during the average week for a reported time period.” (See www.nielsenmedia.com/glossary.) Thus, high viewer concentration corresponds roughly to low reach. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

viewer concentration for the network is likely relatively low. Network viewer concentration is a relevant measure for examining the most efficient way to distribute a network because network viewer concentration gauges the degree to which a network carries niche programming. Niche programming content appeals to a relatively narrow viewer audience so that networks that carry niche programming are likely to have high viewer concentration.

126. The economics of cable network distribution implies that MVPDs are likely to distribute niche programming networks on less penetrated tiers (or tiers that reach fewer viewers), all else being equal. Networks with niche programming appeal to a relatively narrow audience. Distributing networks with niche programming on highly penetrated tiers is unlikely to be economic for MVPDs. Distributing networks to more subscribers tends to be more costly for MVPDs in terms of license fees. Moreover, distributing niche programming networks on a highly penetrated tier is likely to generate relatively little value for the MVPD because the network would appeal to a relatively small share of the total audience on the tier. Therefore, MVPDs are likely to distribute niche programming networks on tiers that reach relatively few subscribers. There are numerous examples of this in the cable industry. For example, according to the data from SNL Kagan, in 2011, CNN had about [REDACTED] subscribers, but niche programming networks such as Blackbelt TV and TV Colombia only had about [REDACTED] and [REDACTED], respectively.¹⁵⁷ Thus, network viewer concentration, which measures the width of network programming appeal, provides useful information about whether wide distribution of a network is likely to be economical.

¹⁵⁷ Blackbelt TV is dedicated to martial-arts entertainment. TV Colombia primarily carries Colombian-interest programming. (SNL Kagan) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED] 158 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 159

158 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

159 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Table 25. Network Viewer Concentration - April 2010



[REDACTED]

128.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

¹⁶⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

129. GSN's relatively high viewer concentration is indicative of relatively narrow viewership appeal. That is, relatively few households watched GSN but those that did watched GSN in high quantities. Therefore, the high degree of viewer concentration for GSN indicates that the distribution of GSN on less penetrated tiers, like the S&E tier, is consistent with economic efficiency and was a plausible business strategy for Cablevision.

Carriages of GSN by Other MVPDs Do Not Invalidate Cablevision's Retiering Decision

130. According to the data presented by Dr. Singer, Cablevision carries GSN to a significantly smaller share of basic subscribers than do other major MVPDs, including

[REDACTED]

¹⁶¹ However, I understand that Cablevision is not the only MVPD carrying WE tv on a

¹⁶⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁶¹ Singer Report ¶ 55.

more highly penetrated tier than GSN: Time Warner and Verizon carry WE tv on their expanded basic service tiers, but carry GSN on a less penetrated tier, and Insight Communications carries WE tv on its Digital Channel Lineup but does not appear to carry GSN at all.¹⁶² I also understand that distributors such as DISH Network, Cox, and AT&T, in addition to Time Warner and Verizon, offer GSN on a less penetrated tier than the expanded basic service tier.¹⁶³ Moreover, Mediacom, an MVPD with more than one million subscribers,¹⁶⁴ [REDACTED]

[REDACTED]¹⁶⁵

131. If networks were similarly situated (which they are not in this case), and in cases where you do not have direct evidence about the economic effects of a retiering (which we do in this case), I have testified that the “most direct and compelling evidence” of discrimination can be found in the carriage decisions of other MVPDs.¹⁶⁶ But I have also noted in previous testimony that the carriage decisions of other MVPDs are just one criterion for assessing the reasonableness of carriage.¹⁶⁷

132. The analysis of economic evidence on the potential carriage discrimination must be evaluated in its totality and must consider factors that account for differences in carriage of a network across MVPDs. It is reasonable for MVPDs to do their own assessment of the benefits of broad distribution of a network. It is also reasonable for MVPDs to reach different

¹⁶² See Exhibit B to Opp. Of Cablevision System Corp. to Petition for Temporary Relief (submitted Nov. 2, 2011).

¹⁶³ *Id.*

¹⁶⁴ See <http://www.ncta.com/Stats/TopMSOs.aspx>

¹⁶⁵ See [REDACTED]; and mediacomtoday-lineup.com/lineup/76/altoona_ankeney_bondurant_carlisle_clive_des_m.aspx (accessed December 13, 2012).

¹⁶⁶ See, for example, Direct Testimony of Jonathan Orszag, *In the Matter of NFL Enterprises LLC v. Comcast Cable Communications, LLC*, MB Docket No 08-214, File No. CSR-7876-P at ¶ 7 (“Orszag NFL Testimony”).

¹⁶⁷ *Id.*, ¶ 8.

conclusions regarding the optimal carriage of a network. The fact that MVPDs reach different conclusions about the value of broad distribution of a network may be explained by the differences in the subjective assessments of the effects of network carriage on an MVPDs' ability to attract and retain subscribers, but may also be a function of the regional variations in viewership preferences by subscribers, as well as contractual obligations.

133. One factor that may explain the difference between Cablevision's carriage of GSN and that of other major MVPDs is that GSN's viewer audience tends to skew [REDACTED]

[REDACTED]¹⁶⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dr. Singer's Analysis Offers No Reliable Evidence of Discrimination on the Basis of Affiliation

134. Dr. Singer claims that Cablevision's decision to retier GSN lacked an "efficiency justification" based on Dr. Singer's comparison of GSN's and WE tv's "price per rating point" measures.¹⁶⁹ Dr. Singer calculates the "price per rating point" measure for both networks as the ratio of the network's average license fee per subscriber per month and average all-day Nielsen rating in 2009 (using SNL Kagan data). Based on SNL Kagan data (as reported by Dr. Singer), GSN's 2009 average license fee per subscriber per month and average all-day Nielsen rating were [REDACTED], and WE tv's 2009 average license fee per subscriber per month and

¹⁶⁸ See *supra*, ¶ 80.

¹⁶⁹ Singer Report at 26, ¶¶ 52-54.

average all-day Nielsen rating were [REDACTED]¹⁷⁰ Using these numbers, Dr. Singer calculates a “price per rating point” of [REDACTED] for GSN and [REDACTED] for WE tv.¹⁷¹ Dr. Singer then argues that because the “price per rating point” is higher for WE tv than for GSN, Cablevision lacks the “efficiency justification” for carrying GSN on the S&E tier.

135. Dr. Singer’s “efficiency justification” analysis based on the “price per rating point” measure is deeply flawed. Ratings alone do not explain network carriage by MVPDs. For example, ratings do not capture the value of carriage to the MVPD because ratings measure only the viewership of a program, and not the *intensity* of viewership or the viewers’ loyalty to the network carrying the programming.

136. The fact that ratings do not measure the intensity of viewership also helps to explain the absence of a direct relationship between ratings and license fees for networks. [REDACTED]

[REDACTED]

[REDACTED]¹⁷²

[REDACTED]

[REDACTED]¹⁷³

137. My analysis of the SNL Kagan data (the data that Dr. Singer used for “price per rating point” measure) shows that the “price per rating point” measure is unrelated to how MVPDs carry the network. Figure 1 depicts a relationship between networks’ “price per rating point” measure and their total number of subscribers in 2010 for the networks in the SNL Kagan

¹⁷⁰ Singer Report ¶ 52.

¹⁷¹ Singer Report, Table 6.

¹⁷² SNL Kagan.

¹⁷³ *Id.*

data that have ratings data for 2010.¹⁷⁴ The graph shows a lack of any clear relationship between the “price per rating point” measure and the number of subscribers. My analysis also confirms a lack of any statistically significant relationship between “price per rating point” measure and the number of subscribers for the networks in the SNL Kagan data, which suggests that Dr. Singer’s analysis is irrelevant for assessing Cablevision’s carriage of GSN (and WE tv).



Figure 1. License Fee per Rating Point vs. TV Household Penetration (2010)



¹⁷⁴ The graph depicts WE tv as a red point and GSN as an orange point. All other networks are depicted as blue points.

138. Another important flaw in Dr. Singer’s analysis is that the average all-day Nielsen rating used by Dr. Singer’s “price per rating point” calculation is for a national viewer audience. As demonstrated by the data presented in Mr. Brooks’s Report, all-day Nielsen ratings were significantly lower in the New York DMA than nationwide. Thus, Dr. Singer’s calculations significantly understate GSN’s “price per rating point” measure in the New York DMA, where the vast majority of Cablevision’s subscribers are actually located.

139. In contrast to Dr. Singer’s “price per rating point” measure, the ratio of programming expenditures to affiliate fees per subscriber does predict, in a statistically significant manner, the number of network subscribers. Networks with a higher programming expenditure to affiliate fee per subscriber ratio tend to have more subscribers.¹⁷⁵ Figure 2 depicts the relationship between the programming expenditure to affiliate fee per subscriber ratio and the total number of subscribers for networks in 2010 based on SNL Kagan data. The x-axis of the graph is the total number of subscribers. The y-axis of the graph is the annual programming expenditure to affiliate fee per subscriber per month ratio. Figure 2 depicts 131 networks in the SNL Kagan data with at least 10 million subscribers and positive affiliate fees in 2010. The graph depicts WE tv as a red point and GSN as an orange point. All other networks are depicted as blue points. The graph shows a clear positive relationship between the two variables: higher programming expenditure to affiliate fee per subscriber ratio is associated with a higher number of subscribers.

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷⁵ Other studies of cable networks have analyzed programming expenditures. See Goolsbee, Austan, “Vertical Integration and the Market for Broadcast and Cable Television Programming,” *FCC Media Ownership Study*, 2007.

140. The positive relationship between programming expenditure to affiliate fee per subscriber ratio and total number of subscribers does not mean that MVPDs explicitly consider the programming expenditure to affiliate fee per subscriber ratio in making their carriage decisions. However, the programming expenditure to affiliate fee per subscriber ratio is a measure of the value of a network relative to its cost. Thus, to the extent that MVPDs make carriage decisions for networks based on the networks' value to subscribers (reasonably measured by programming expenditures) and the cost of carrying the network (measured by the affiliate fee per subscriber), the MVPDs' carriage decisions are linked to the programming expenditure to affiliate fee per subscriber ratio even if the MVPDs do not explicitly consider this measure in deciding how to carry a network.



Figure 2. Programming Expenditure to Affiliate fee Per Subscriber per Month Ratio vs. Total Subscribers (2010)



141. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

142. Dr. Singer also presents a table (“for illustrative purposes”) that “compares the placement of Cablevision’s affiliated networks with the placement of GSN as of September

2011.”¹⁷⁶ This table shows four Cablevision-affiliated networks being carried on the Family tier (Cablevision’s highly penetrated tier) and 23 Cablevision-unaffiliated networks being carried on the S&E tier. Dr. Singer’s table shows that the four Cablevision-affiliated networks carried on the Family tier are WE tv, MSG, AMC, and Fuse.¹⁷⁷ The implication of the table is Cablevision discriminates against unaffiliated networks in favor of affiliated networks. But the table is extremely misleading because it excludes all the networks unaffiliated with Cablevision carried on the Family tier. In fact out of the 69 cable networks carried on Cablevision’s Optimum Value tier (Cablevision’s lowest cost tier above Broadcast Basic), 63 are unaffiliated with Cablevision.¹⁷⁸ It is therefore not appropriate to reach a conclusion of discrimination based solely on Cablevision’s carriage of networks.

143. For the reasons I explain above, Dr. Singer lacks any valid basis for claiming that Cablevision’s decision to distribute GSN on the S&E Tier lacks an “efficiency justification” and amounts to discrimination on the basis of affiliation. Thus, there is no basis for concluding that Cablevision’s decision to retier GSN was motivated by anything but sound business judgment that did not consider any effect of carriage of GSN on Cablevision’s affiliated networks, WE tv and Wedding Central.

¹⁷⁶ Singer Report ¶ 24 (footnote omitted).

¹⁷⁷ Singer Report Table 1.

¹⁷⁸ The Cablevision-affiliated networks carried on the Optimum Value tier include: AMC, Fuse, WE tv, MSG, MSG Plus, and MSG Varsity (Source: Optimum Value Channel lineup: www.optimum.com/digitalcable-tv/pricing)

V. CABLEVISION’S DECISION TO RETIER GSN HAD NO SIGNIFICANT EFFECT ON GSN’S ABILITY TO COMPETE FOR VIEWERS, ADVERTISERS, AND CARRIAGE RIGHTS

144. Dr. Singer claims that Cablevision’s decision to carry GSN on the S&E Tier has unreasonably restrained GSN’s ability to compete fairly. This claim has no valid economic basis. [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]¹⁷⁹ According to the data cited by Dr. Singer in his Report, after Cablevision began distributing GSN on the S&E Tier, GSN still had [REDACTED]¹⁸⁰ [REDACTED]

[REDACTED]
[REDACTED] Neither Dr. Singer nor Mr. Brooks provide evidence that such a modest change in the number of GSN subscribers had a significant effect on GSN’s ability to compete for advertising customers or programming rights. They do not claim that GSN suffered any advertising price erosion as a result of the retiering of GSN (and they do not provide any reliable evidence that would suggest that there was such advertising price erosion). [REDACTED]

[REDACTED]
[REDACTED]¹⁸¹ [REDACTED]
[REDACTED]
[REDACTED]¹⁸²

¹⁷⁹ Singer Report ¶ 59.

¹⁸⁰ Report ¶ 27.

¹⁸¹ [REDACTED]
[REDACTED]

¹⁸² Source: SNL Kagan.

145. Dr. Singer argues that Cablevision’s decision to retier GSN could impair GSN’s ability to secure carriage arrangements.¹⁸³ Dr. Singer claims that “it is reasonable to conclude that Cablevision’s decision to limit GSN’s distribution might negatively influence the decisions of other cable operators with which GSN does business.”¹⁸⁴ Dr. Singer makes a number of arguments for why GSN’s retiering by Cablevision may have a negative effect on carriage of GSN by other MVPDs.¹⁸⁵ These arguments are highly speculative and lack any basis in either sound economics or facts. However, Dr. Singer’s arguments about the effect GSN’s retiering are irrelevant. As Dr. Singer concedes, GSN’s carriage by other MVPDs has not declined since GSN’s retiering. Although Dr. Singer attempts to ignore this fact by arguing that “Cablevision’s repositioning of GSN happened relatively recently” and that it is “unrealistic to expect the rest of the industry to change its carriage arrangements overnight,” GSN’s retiering occurred almost two years ago. In a nutshell, Dr. Singer’s view about the effects of GSN’s retiering is just not grounded in reality.

146. Dr. Singer and Mr. Brooks also do not offer any evidence to suggest that GSN’s ability to acquire programming rights has been weakened as a result of Cablevision’s retiering of GSN. The reason: Such a reduction in the number of subscribers is unlikely to have any significant effect on GSN’s ability to compete for viewers, advertising, or programming content, especially in light of the fact that GSN is already carried by major MVPDs. According to the data from SNL Kagan, [REDACTED]

[REDACTED] In comparison, the SNL Kagan data show that [REDACTED]

¹⁸³ Singer Report ¶¶ 61 – 63.

¹⁸⁴ Singer Report ¶ 61.

¹⁸⁵ Singer Report ¶¶ 61 – 62.

[REDACTED]

[REDACTED]¹⁸⁶ [REDACTED]

[REDACTED]

[REDACTED] Furthermore, GSN's own financial statements show that [REDACTED]

[REDACTED]

[REDACTED]¹⁸⁷ Thus, any assertion that Cablevision's retiering of GSN had a significant negative effect on GSN's financial performance is not borne out by evidence.

147. Dr. Singer finds that GSN's retiering resulted in a loss for GSN in about [REDACTED]

[REDACTED]

[REDACTED]¹⁸⁸ However, GSN's retiering does not appear to have had a significant negative effect of GSN's overall financial performance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁸⁹ [REDACTED]

¹⁸⁶ [REDACTED] (SNL Kagan.)

¹⁸⁷ Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN_CVC_00133595-616, at 597.)

¹⁸⁸ Singer Report ¶¶ 59 – 60.

¹⁸⁹ Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN_CVC_00133595-616, at 598.)

148. Dr. Singer further claims that because of GSN’s retiering “GSN is restrained in its ability to compete effectively for viewers and advertisers.”¹⁹⁰ He does not provide any support for his claim regarding GSN’s “restrained” ability to compete for viewers. Regarding advertising, Dr. Singer claims that because of “a hole [in GSN’s footprint] in the coveted New York market, GSN is restrained in its ability to compete effectively for advertisers, many of which view coverage in the New York market as a prerequisite for making a network a ‘meaningful contender.’”¹⁹¹ Dr. Singer also cites an economic article to support his assertion that “economic research has shown that gaps in a network’s coverage area have grave consequences for advertising revenues.”¹⁹² However, the cited article offers no support for Dr. Singer’s “grave consequences” claim.¹⁹³ Dr. Singer’s claims regarding the effect of the reteiring on GSN’s ability to compete for advertisers are also not supported by the evidence of actual post-retiering outcomes. As I discuss earlier, [REDACTED]

[REDACTED]¹⁹⁴ [REDACTED]

[REDACTED]¹⁹⁵

¹⁹⁰ Singer Report ¶ 64.

¹⁹¹ Singer Report ¶ 65, citing the Goldhill Declaration, footnote omitted. It is worthwhile to note that Dr. Singer’s assertion is based on his understanding of Mr. Goldhill’s (President and CEO of GSN) understanding of advertisers’ perceptions of the value of advertising on GSN. This kind of evidence hardly rises to the level of economic analysis.

¹⁹² Singer Report ¶ 65, footnote omitted.

¹⁹³ See Singer Report fn. 83. Also, see Chen, David and David Waterman, “Vertical Ownership, Program Network Carriage and Tier Positioning in Cable Television: An Empirical Study”, *Review of Industrial Organization*, Vol. 30, No. 3, pp. 230.

¹⁹⁴ SNL Kagan.

¹⁹⁵ Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN_CVC_00133595-616, at 598.

149. Dr. Singer also presents a model that predicts GSN’s future General Rate (GR) advertising revenues. Based on this model, Dr. Singer finds that [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] Dr. Singer concludes that the “impact of Cablevision’s retiering appears to have been felt beyond the New York market.”¹⁹⁶

150. However, Dr. Singer’s conclusion about the effect of the retiering on GSN’s advertising is incorrect.¹⁹⁷ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]¹⁹⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹⁶ Singer Report ¶ 66.

¹⁹⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁹⁸ See GSN_CVC_00154473 and GSN_CVC_00134774.

151. Moreover, Dr. Singer’s previous testimony suggests that GSN’s ability to compete has not been impaired by Cablevision’s retiering. First, Dr. Singer has testified previously that a firm must be foreclosed from 20 percent of a market for an action to be “presumptively anticompetitive.”¹⁹⁹ Here, the allegation is that Cablevision’s retiering reduced the number of GSN subscribers by less than [REDACTED]. Dr. Singer has not explained why he used 20 percent as the threshold for presumptive anticompetitive conduct in the *NFL v. Comcast* case and simply assumes, without empirical evidence, that a [REDACTED] reduction in the number of GSN subscribers has the effect of restraining unreasonably GSN’s ability to compete fairly. Second, Dr. Singer’s previous testimony suggests that a network with more than 40 million subscribers can “compete effectively for advertisers and programmers.”²⁰⁰ Here, GSN still has [REDACTED] million subscribers,²⁰¹ so presumably Dr. Singer’s past testimony would suggest that GSN can “compete effectively for advertisers and programmers.”

¹⁹⁹ See Direct Testimony of Dr. Hal J. Singer, *In the Matter of NFL Enterprises LLC vs. Comcast Cable Communications*, MB Docket No. 08-214, File No. CSR-7876-P, April 6, 2009, fn. 68. Dr. Singer cited legal literature for this threshold; the economics literature does not support a 20-percent threshold.

²⁰⁰ Dr. Singer testified that, “As long as Tennis Channel’s reach remains substantially below 40 million national subscribers, Tennis Channel is restrained in its ability to compete effectively for advertisers and programmers, many of which view national distribution (defined by thresholds in the range of 40 million subscribers) as a prerequisite for making a network a meaningful contender.” A fair reading of this statement is that Dr. Singer suggests that networks with more than 40 million subscribers are not restrained in their ability “to compete effectively for advertisers and programmers.” Declaration of Hal J. Singer, Before the Federal Communications Commission, *In the Matter of The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Docket No. CSR-8258-P, January 4, 2010, ¶ 31.

²⁰¹ Singer Report ¶ 27.

152. However, notwithstanding his previous testimony, Dr. Singer now claims that Cablevision's carriage of GSN on the S&E Tier has "impaired" the ability by GSN to reach carriage agreements with other MVPDs.²⁰² In particular, Dr. Singer claims that:²⁰³

Other vertically integrated cable operators carry GSN and WE tv on highly penetrated tiers (most likely pursuant to formal or informal reciprocal carriage arrangements), and it is reasonable to conclude that Cablevision's decision to limit GSN's distribution might negatively influence the decisions of other cable operators with which GSN does business.

153. However, Dr. Singer does not offer a shred of evidence to support his claim of "reciprocal carriage arrangements" between vertically integrated cable operators.²⁰⁴ Dr. Singer does not explain how the presence of the purported "reciprocal carriage arrangements" would lead other cable operators to reduce carriage of GSN as a result of Cablevision's decision to distribute GSN on the S&E Tier. Dr. Singer's logic simply makes no sense. More importantly, Dr. Singer offers no evidence of a decline in the carriage of GSN by other MVPDs since Cablevision's decision to carry GSN on the S&E Tier. Dr. Singer's claim that Cablevision's decision "impaired" the ability by GSN to reach carriage agreements with other MVPDs is completely baseless.

154. Dr. Singer does not demonstrate that Cablevision's decision to carry GSN on the S&E tier had any negative effects on GSN's advertising prices or any positive effects on WE tv's advertising prices. Dr. Singer also offer no evidence that GSN is restrained unreasonably in its ability compete for viewers as a result of Cablevision's carriage of GSN on the S&E Tier. Thus,

²⁰² Singer Report at 33.

²⁰³ Singer Report ¶ 61 (footnote omitted).

²⁰⁴ Dr. Singer cites an unpublished paper from six years ago written by a graduate student as evidence of such arrangements. However, Dr. Singer misinterprets the paper's findings and its relevance to this case is not at all clear.

Dr. Singer's conclusion that Cablevision's carriage of GSN on the S&E Tier has "restrained" GSN's ability to compete for viewers and advertisers lacks any basis in economic analysis.

VI. CONCLUSION

155. Based on my work to date, I conclude that, from an economic perspective, GSN is not "similarly situated" with the Cablevision-affiliated networks. The empirical evidence shows no significant competition between WE tv and GSN for viewers, advertisers, or programming content. There was, likewise, no significant competition between Wedding Central and GSN for viewers, advertisers, or programming content.

156. I also conclude that Cablevision's decision to distribute GSN on the S&E Tier was consistent with rational business conduct, unmotivated by Cablevision's affiliation with WE tv and Wedding Central. The logic is clear: WE tv and GSN do not compete for viewers, advertisers, and programming content in a significant way. Therefore, Cablevision did not, and does not, have an incentive to discriminate against GSN on the basis of affiliation in the carriage of the network.

157. Finally, I conclude that Cablevision's distribution of GSN on the S&E Tier did not restrain GSN's ability to compete for viewers, advertisers, or programming content.

**CONTAINS HIGHLY CONFIDENTIAL INFORMATION – DO NOT RELEASE
SUBJECT TO PROTECTIVE ORDER IN GAME SHOW NETWORK, LLC V. CABLEVISION SYSTEMS
CORPORATION, FILE NO. CSR-8529-P**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of December, 2012.



Jonathan M. Orszag

Appendix A

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 205 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 206 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 207 [REDACTED]

[REDACTED] [REDACTED]

205 [REDACTED]

[REDACTED]

206 [REDACTED]

[REDACTED]

[REDACTED]

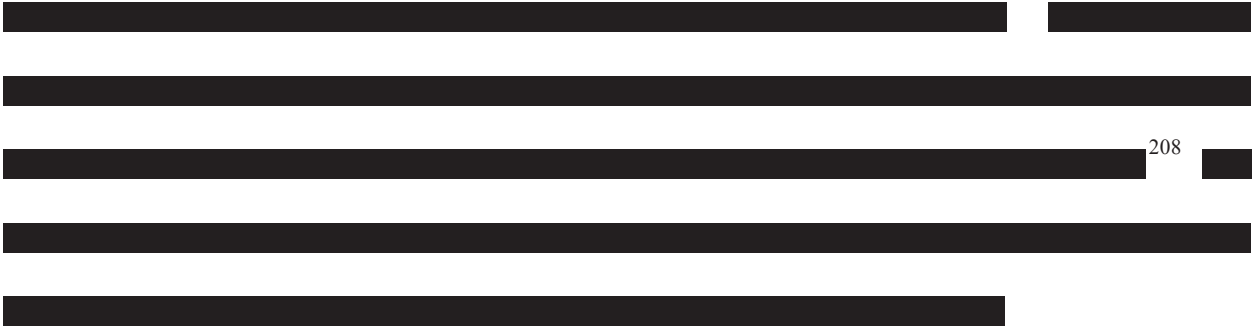
[REDACTED]

[REDACTED]

[REDACTED]

207 [REDACTED]

[REDACTED]



208

Figure A.1 Nielsen Ratings vs. STB Viewership Ratings - April 2010
(Ratings Depicted as Logarithms)



208

3. [Redacted]



208

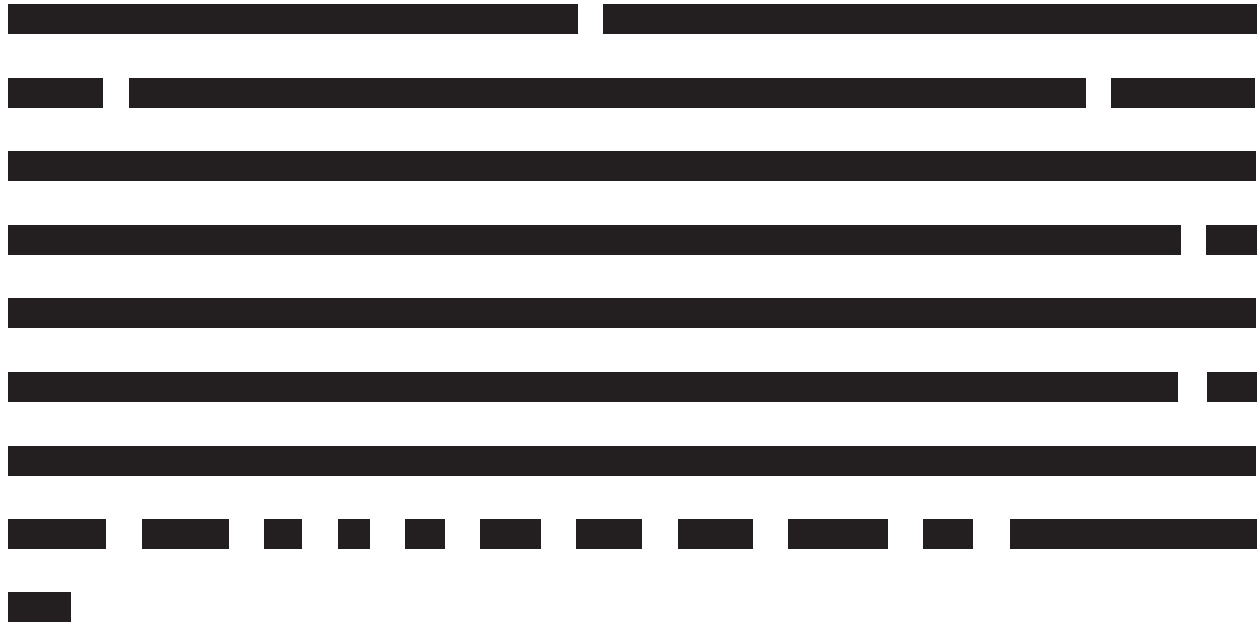


Figure A.2 Nielsen Ratings vs. STB Viewership Ratings - April 2011
(Ratings Depicted as Logarithms)



REDACTED

4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix B

1. Below I present details of a test of whether the retiering of GSN has resulted in a significant increase of WE tv's viewership.²⁰⁹ Estimation of the effects of Cablevision's decision to retier GSN on household viewership of other networks is complicated by the fact that households' viewership decisions are affected by many factors and those factors may be changing over time. Because of this, a simple before-and-after examination of viewership shares risks attributing to the retiering decision trends in viewership that have some other cause.

2. To investigate the effect of Cablevision's decision to retier GSN on WE tv's share of viewers in the post-retiering period, I use an estimation technique known as "difference-in-differences." This is a standard econometric technique that does not rely on structural modeling, but rather compares changes in viewership shares for households that have been affected by the decision to changes in viewership shares for households that have not been affected by the decision. The households that have not been affected by Cablevision's decision act as a control group to capture the general trends in viewership.

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

²⁰⁹ The calculations of the retiering effects are analogous for other networks, including Wedding Central.

[illegible]

5. _____

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting system in providing reliable financial information.

2. The second part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting system in providing reliable financial information.

3. The third part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting system in providing reliable financial information.

4. The fourth part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting system in providing reliable financial information.

Table B.2. Regression Results

Country	Share of GDP
United States	210
Germany	100
France	90
Japan	80
China	70

7. [REDACTED]
[REDACTED]
[REDACTED] 4, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ Table B.3. Effect of GSN Retiring on WE tv and Other Networks



Appendix C

[REDACTED]

Table C1. From CNN Switching Rates (April 2010)

[REDACTED]	
------------	--

Table C2. From Fox News Switching Rates (April 2010)

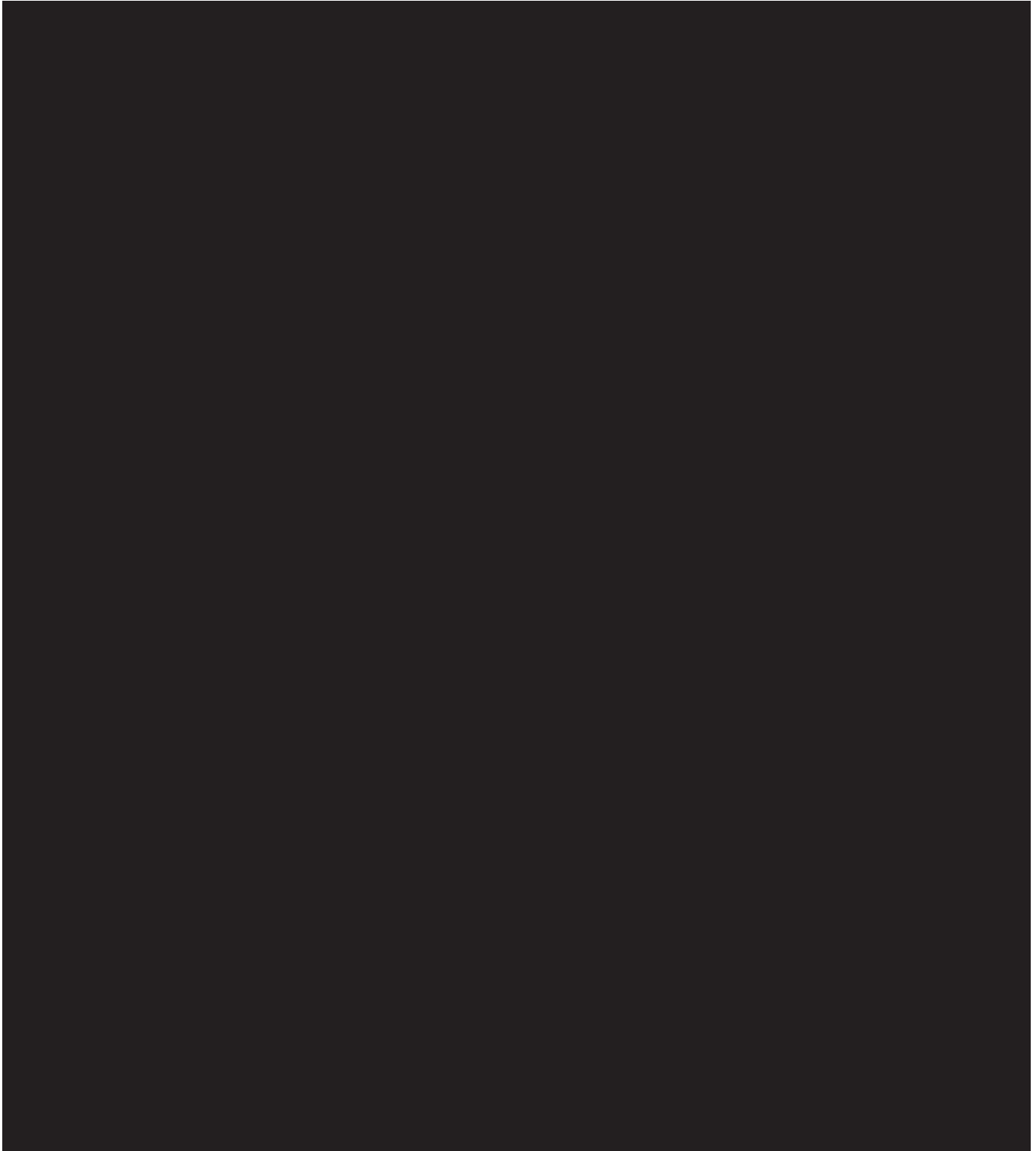


Table C3. From Nickelodeon Switching Rates (April 2010)



Table C4. From Disney Switching Rates (April 2010)



Table C5. From MTV Switching Rates (April 2010)



Table C6. From VH1 Switching Rates (April 2010)

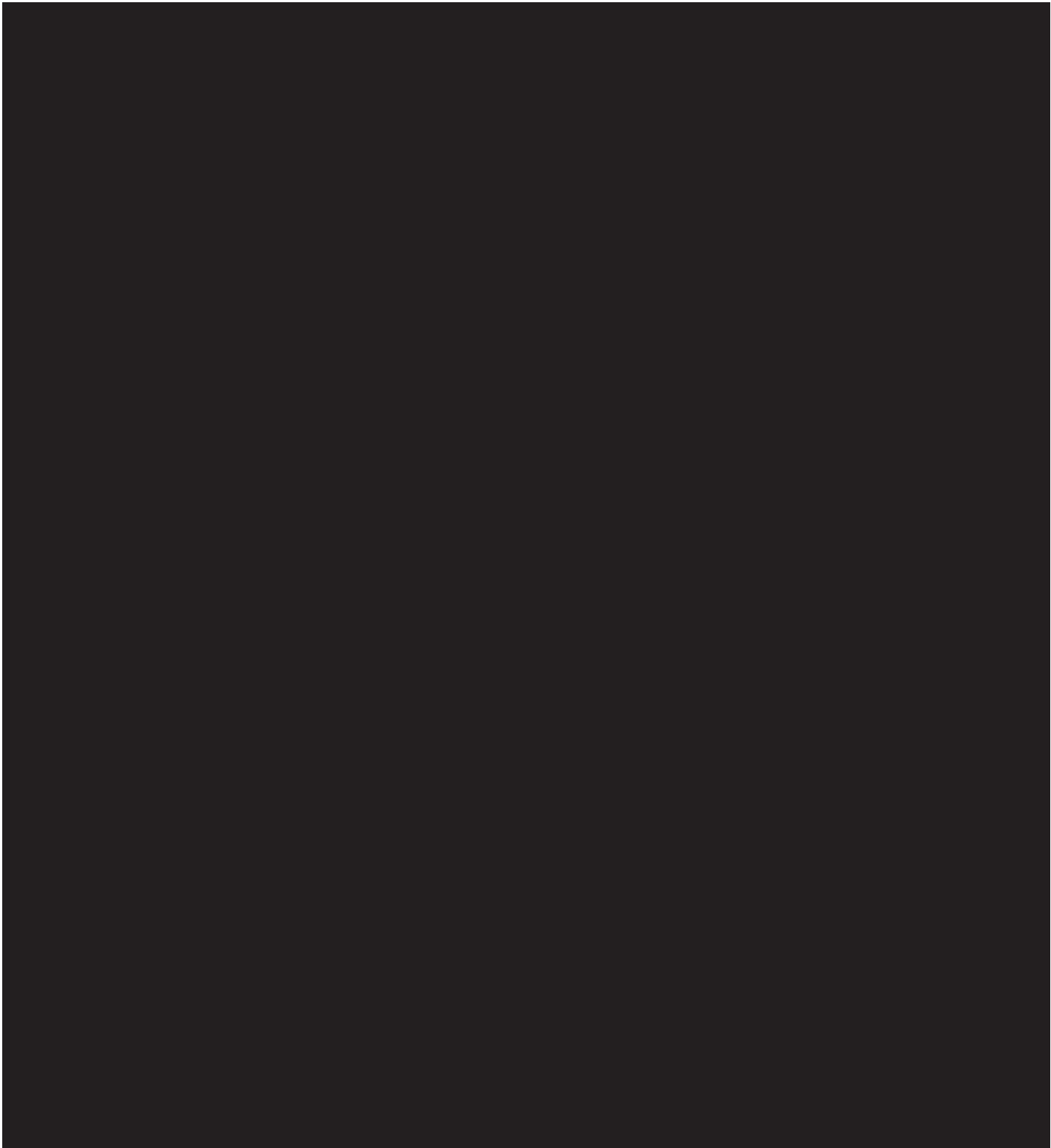


Table C7. From ESPN Switching Rates (April 2010)



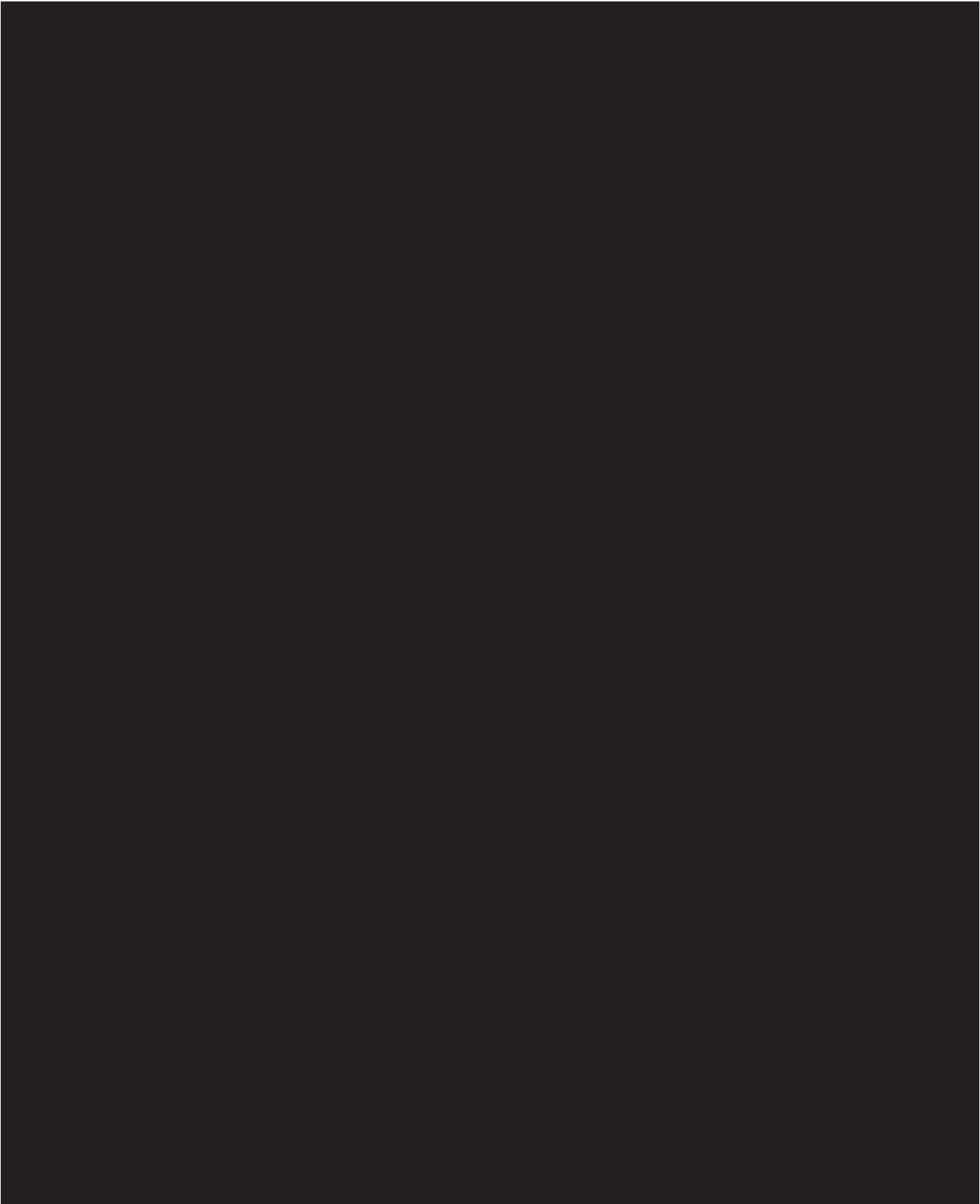
Table C8. From ESPN2 Switching Rates (April 2010)



Table C9. From USA Switching Rates (April 2010)



Table C10. From TNT Switching Rates (April 2010)



Appendix D

[REDACTED]

Table D1. CNN Viewer Network Share (April 2010)




Table D2. Fox News Viewer Network Share (April 2010)




Table D3. MTV Viewer Network Share (April 2010)



Table D4. VH1 Viewer Network Share (April 2010)



Table D5. Nickelodeon Viewer Network Share (April 2010)



Table D6. Disney Viewer Network Share (April 2010)



Table D7. ESPN Viewer Network Share (April 2010)

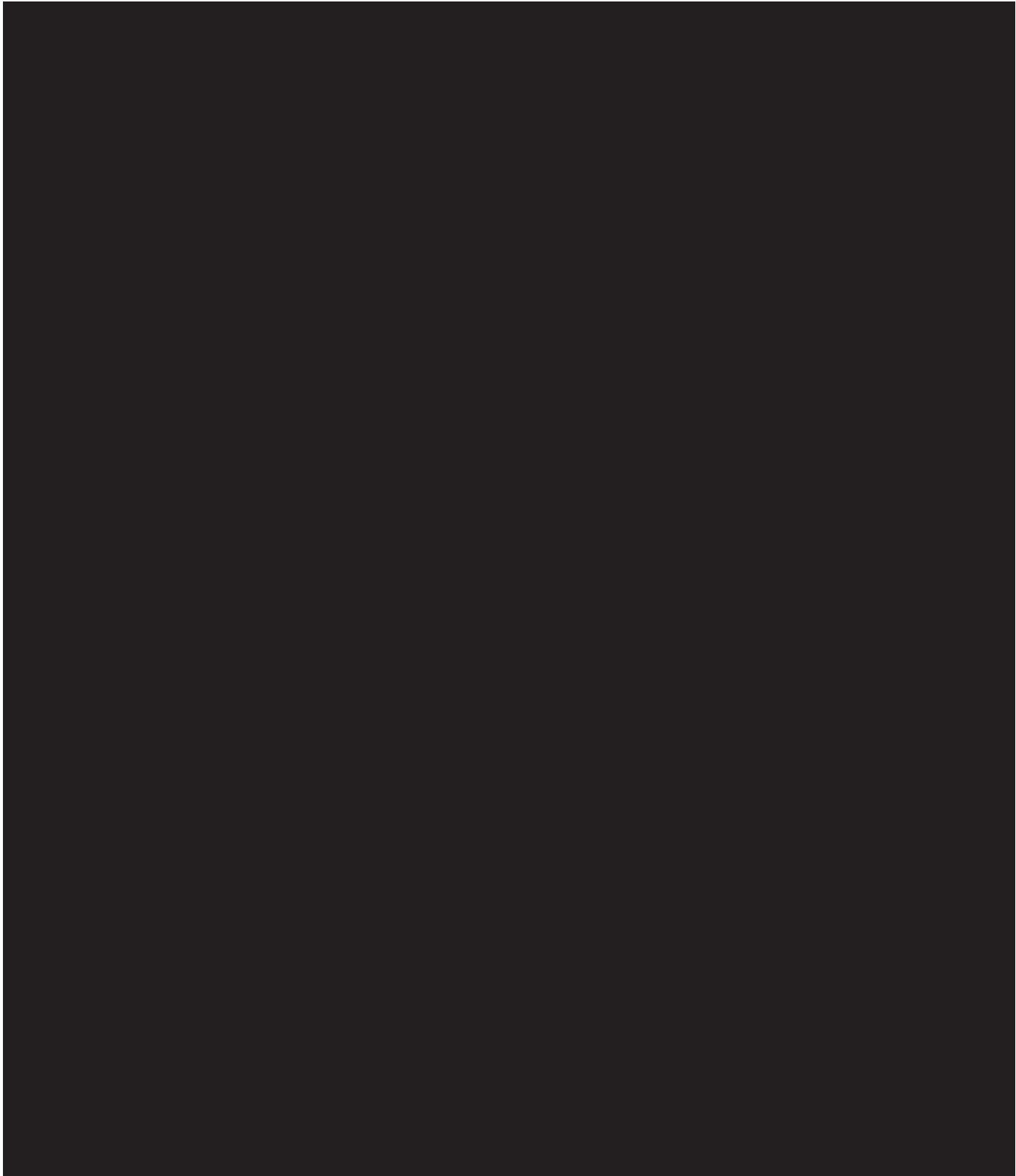


Table D8. ESPN2 Viewer Network Share (April 2010)

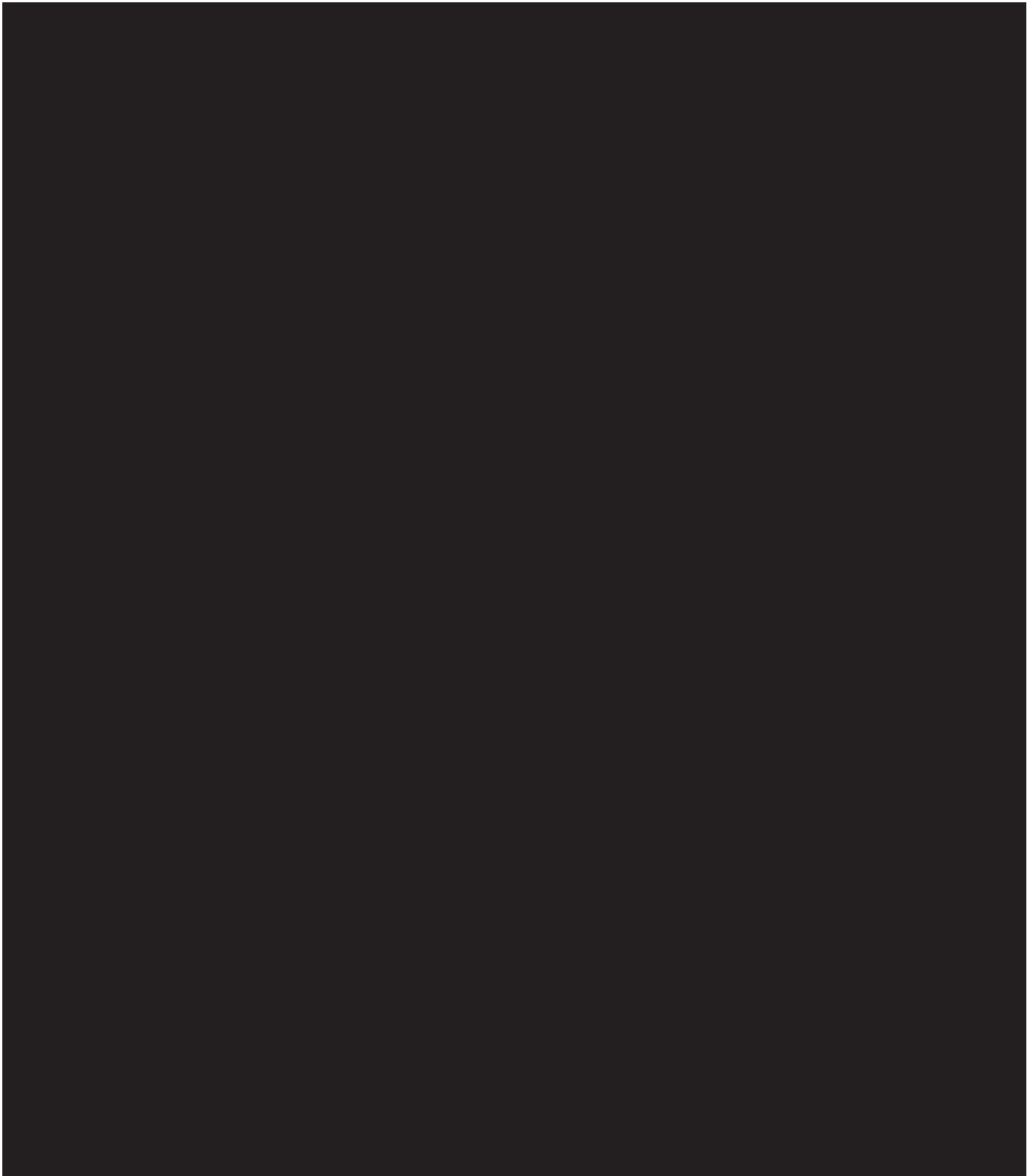


Table D9. TNT Viewer Network Share (April 2010)



Table D10. USA Viewer Network Share (April 2010)



Appendix E



Figure E1. Age 65+ Share of Viewership



Figure E2. Viewer Median Age



Figure E3. Female Share of Viewership



Figure E4. Female Share of Viewership (Age 18-49)



Figure E5. Age 18-49 Viewership Share



Figure E6. Median Viewer Income

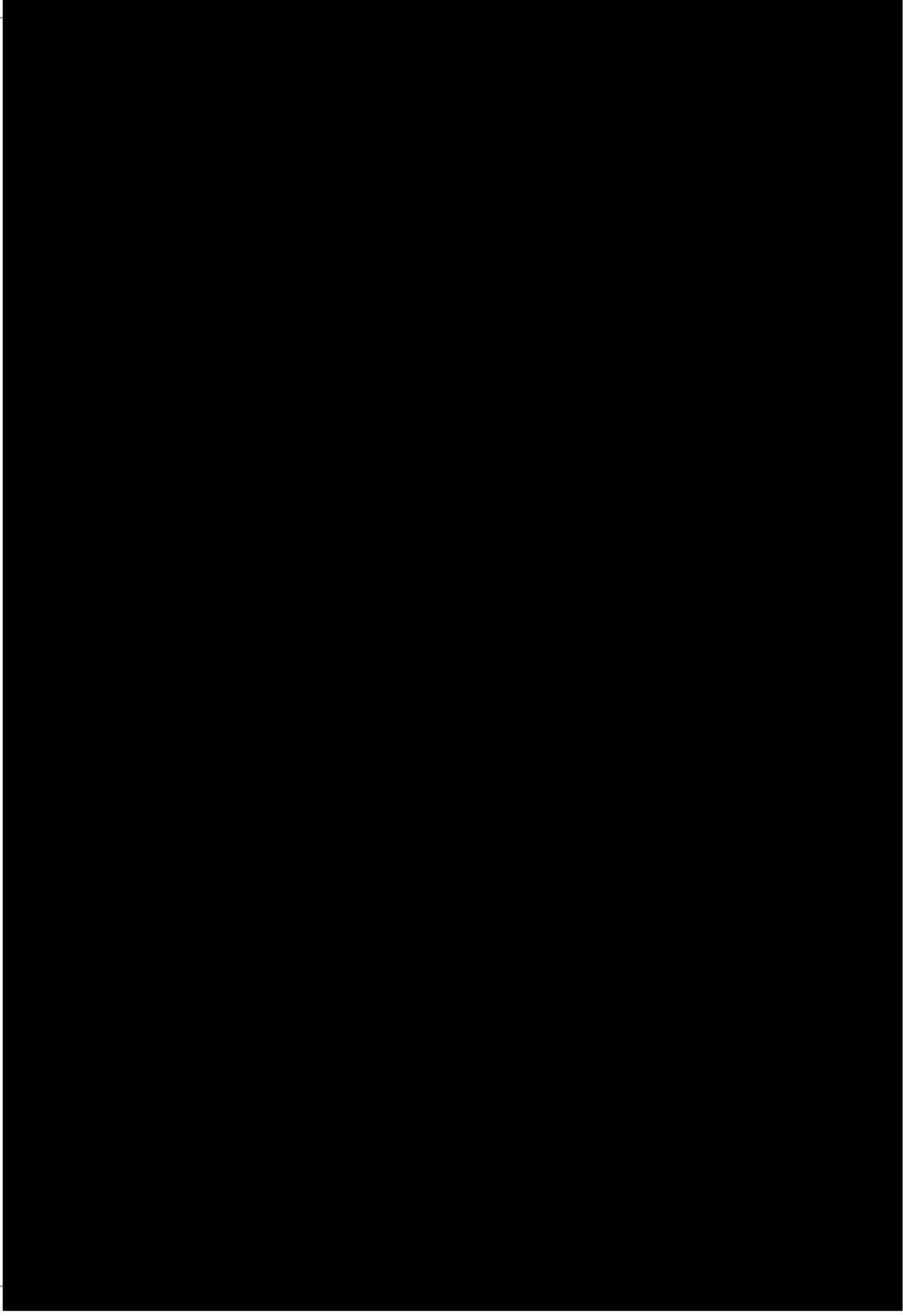


Figure E7. Viewer Household Home Ownership Share



Figure E8. Viewer Head of Household White Collar Occupation Share



Figure E9. Viewer Head of Household not in Labor Force Share



Figure E10. Viewer Head of Household 4+ Years of College Share



Figure E11. Viewer Head of Household No College Share



Figure E12. Viewer Head of Household Age 50+ Share



Figure E13. Viewer Resides in County Size A Share



Figure E14. Viewer Resides in County Size D Share



Figure E15. Viewer Household Size 3+ Share



Figure E16. Viewer Household with Children Share



Figure E17. Viewer Head of Household Hispanic Share



Figure E18. Viewer Head of Household Black Share



Figure E19. Viewer Head of Household White Share



Figure E20. Network Attribute Scatter Plot

Viewer Household Size 3+ Share (x-axis)

Viewer Head of Household Not in Labor Force Share (y-axis)



Figure E21. Network Attribute Scatter Plot
Viewer Head of Household Age 50+ Share (x-axis)
Viewer Head of Household White Collar Occupation Share (y-axis)



Figure E22. Network Attribute Scatter Plot

Age 65+ Share of Viewership (x-axis)

Female Share of Viewership (y-axis)



Figure E23. Network Attribute Scatter Plot

Age 65+ Share of Viewership (x-axis)
Femal Share of Viewership (Age 18-49) (y-axis)



Figure E24. Network Attribute Scatter Plot

Age 65+ Share of Viewership (x-axis)
Viewer Head of Household 4+ Years of College Share (y-axis)



Figure E25. Network Attribute Scatter Plot

Age 65+ Share of Viewership (x-axis)

Median Viewer Income (y-axis)



Figure E26. Network Attribute Scatter Plot
Viewer Head of Household White Collar Occupation Share (x-axis)
Viewer Household Home Ownership Share (y-axis)



Figure E27. Network Attribute Scatter Plot

Viewer Resides in County Size D Share (x-axis)

Median Viewer Income (y-axis)



Figure E28. Network Attribute Scatter Plot

Viewer Resides in County A Share (x-axis)

Viewer Head of Household Hispanic Share (y-axis)



Figure E29. Network Attribute Scatter Plot

Age 65+ Share of Viewership (x-axis)
Viewer Head of Household White Share (y-axis)



Appendix F

1. Below I present the results of my econometric analysis of churn rates, which shows that the viewership of GSN prior to GSN’s retiering had no statistically significant effect on post-retiering churn rates.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table F.1. Variables Description

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

3. I estimate the following Probit regression model:

$$\text{Pr(Continue Cablevision Subscription in 2011)} = \alpha + \beta_1 \cdot \text{GSN} \geq 1\text{hr}_{2010} + \beta_2 \cdot \text{Sports Tier}_{2010} + \beta_3 \cdot \text{Added After 2007} + \beta_4 \cdot \text{Total Duration}_{2010} + \text{Service Tier Fixed Effects}_{2010} + \varepsilon$$

4. [REDACTED]

[REDACTED]

[REDACTED]²¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table F.2. Regression Results

[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]

²¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix G

1. Below I present the results of my econometric analysis, which estimates the number of S&E tier subscribers in April 2011 that could be attributed to GSN's retiering.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table G.1. Variables Description

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]²¹² [REDACTED]

[REDACTED]

²¹² [REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



December 2012

CURRICULUM VITAE

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PROFESSIONAL EXPERIENCE:

- **Senior Managing Director**, Compass Lexecon, previously Competition Policy Associates, Inc. (“COMPASS”) and FTI Consulting, Inc. January 2006-Present; Competition Policy Associates, Inc./Sebago Associates, Inc., March 2000-January 2006. Manage economic consulting firm specializing in antitrust, economic policy, and litigation matters. Member of the firm’s Executive Committee. Conduct economic and financial analysis on a wide range of complex issues in policy and regulatory for corporations and public-sector entities. Serve as expert witness in proceedings before U.S. and international courts and administrative agencies and the European Court of First Instance on competition policy issues, including industry structure, vertical relationships, and intellectual property rights. Consult on international projects in Argentina, Australia, The Bahamas, Canada, Ecuador, the European Union, New Zealand, South Korea, Trinidad and Tobago, and the United Kingdom.
- **Assistant to the Secretary and Director of the Office of Policy and Strategic Planning**, U.S. Department of Commerce (Washington, D.C.), March 1999-March 2000. Served as the Secretary of Commerce's chief policy adviser. Responsible for coordinating the development and implementation of policy initiatives within the Department. Worked on a wide range of issues, from implementing the steel loan guarantee program to telecommunications and e-commerce issues. Represented the Secretary of Commerce in meetings with other government officials and outside organizations, and testified before Congress on behalf of the Department on budget and Native American economic development issues.
- **Economic Policy Advisor**, National Economic Council, The White House (Washington, D.C.), August 1997-March 1999; Assistant Director, January 1996-November 1996. Coordinated policy processes on a wide range of issues, from Social Security reform to job training reform, unemployment insurance reform, homeownership and low-income housing issues, the minimum wage, and Individual Development Accounts. Responsible for helping to coordinate the Administration’s daily economic message and to promote (and defend) President Clinton’s economic record.

REDACTED – FOR PUBLIC INSPECTION

- **Economics Teacher**, Phillips Exeter Academy Summer School (Exeter, New Hampshire), June 1997-August 1997. Taught introductory economics at Phillips Exeter Academy Summer School.
- **Economic Consultant**, James Carville (Washington, D.C.), August 1995-January 1996. Helped James Carville, President Clinton's 1992 campaign strategist, research and write his *New York Times* #1 best-selling book, *We're Right, They're Wrong: A Handbook for Spirited Progressives*.
- **Special Assistant to the Chief Economist**, U.S. Department of Labor, (Washington, D.C.), August 1994-August 1995. Served as an economic aide to the Chief Economist (Alan B. Krueger) and the Secretary of Labor (Robert B. Reich).

Volunteer Positions

- **Director of Policy Preparations for Vice Presidential Debate**, Gore-Lieberman Presidential Campaign, September 2000-October 2000. Oversaw policy preparations for Democratic Vice Presidential candidate before his debate with the Republican Vice Presidential candidate.
- **Weekly Commentator**, *Wall Street Journal Online*, September 2004-November 2004. Commented on economic issues during the 2004 presidential campaign. Topics of weekly commentary included jobs, health care, energy, trade, taxes, tort reform, appointments, and fiscal policy.

EDUCATION:

- Oxford University, M.Sc. in Economic and Social History, 1997
- Princeton University, A.B. *summa cum laude* in Economics, 1996
- Phillips Exeter Academy, graduate with High Honors, 1991

HONORS, PROFESSIONAL ASSOCIATIONS, AND APPOINTMENTS:

- Phi Beta Kappa, inducted June 1996
- Marshall Scholar, 1996
- *USA Today* All-USA College Academic Team, 1996
- Corporation for Enterprise Development Leadership Award for “Forging Innovative Public Policies to Expand Economic Opportunity in America,” 1999
- *Who's Who in America*, 2001-Present; Also, *Who's Who in the World*; *Who's Who in Science and Engineering*; *Who's Who in Finance and Business*; and *Who's Who of Emerging Leaders*
- California Workforce Investment Board, 2000-2003
- California Governor's Technology Advisory Group, 2000-2003
- Adjunct Lecturer, University of Southern California (Los Angeles, CA), January 2002-June 2002.
- *Global Competition Review's* “40 under 40: The World's 40 Brightest Young Antitrust Lawyers and Economists,” 2004
- *Global Competition Review's* “Best Young Competition Economists,” 2006
- *The International Who's Who of Competition Economists*, 2007-Present

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- LawDay Leading Competition Economics Experts, 2009-Present.
- Expert Guides, Best of the Best USA, 2011.
- Fellow, University of Southern California's Center for Communication Law & Policy, 2007-Present.
- FTI Consulting Inc., Founders Award, 2008.
- Senior Fellow, Center for American Progress, 2009-Present
- Board of Directors, The First Tee of Washington, DC, 2005-2011; Competition Policy Associates, Inc., 2003-2006; Sebago Associates, Inc., 2000-2007; JMP Securities, Inc. (NYSE: JMP), 2011-Present; Board of Governors, Tiger Woods Foundation, 2012-Present.
- Member of the American Economic Association, the Econometric Society, the American Finance Association, the Pacific Council on International Policy, and the United States Golf Association.
- Member, Clinton Global Initiative, 2008-Present.

REPORTS, PAPERS, AND NOTES:

- "The Liftoff of Consumer Benefits from the Broadband Revolution," with Mark Dutz and Robert Willig, *Review of Network Economics*, forthcoming.
- "Antitrust Guidelines for Private Purchasers Engaged in Value Purchasing of Health Care," with Tim Muris and Bilal Sayyed, Commissioned by Buying Value, July 2012.
- "The Economic Benefits of Pharmacy Benefit Managers," with Kevin Green, Commissioned by Express Scripts and Medco, December 5, 2011.
- "An Analysis of the Benefits of Allowing Satellite Broadband Providers to Participate Directly in the Proposed CAF Reverse Auctions," with Bryan Keating, Commissioned by ViaSat, Inc., April 18, 2011.
- "A Preliminary Economic Analysis of the Budgetary Effects of the Proposed Restrictions on 'Reverse Payment' Settlements," with Bret Dickey and Robert Willig, August 10, 2010.
- "An Economic Assessment of Patent Settlements in the Pharmaceutical Industry," with Bret Dickey and Laura Tyson, Volume 10, Issue 2, *Annals of Health Law*, Winter 2010.
- "An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime," with Michael Katz and Theresa Sullivan, Commissioned by the National Cable & Telecommunications Association, DIRECTV, and DISH Network, November 12, 2009.
- "Intellectual Property and Innovation: New Evidence on the Relationship Between Patent Protection, Technology Transfer, and Innovation in Developing Countries," with Mark Dutz and Antara Dutta, October 2009.
- "Intellectual Property and Innovation: A Literature Review of the Value of Patent Protection for Developing Countries," with Mark Dutz and Antara Dutta, October 2009.
- "An Economic Perspective on the Antitrust Case Against Intel," with Robert Willig and Gilad Levin, October 2009.
- "The Substantial Consumer Benefits of Broadband Connectivity for U.S. Households," with Mark Dutz and Robert Willig, July 2009.

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- “An Economic Assessment of the Homeowners’ Defense Act of 2009,” with Doug Fontaine, July 2009.
- “A Preliminary Economic Analysis of FTC Chairman Leibowitz’s June 23rd Speech,” with Robert Willig, June 24, 2009.
- “Assessment of Microsoft’s Behaviour in the Browser Market,” with Assaf Eilat, Gilad Levin, Andrea Lofaro, and Jan Peter van der Veer, Submitted to the Commission of the European Communities, COMP/C-3/39.530, May 27, 2009.
- “An Economic Perspective on the Microsoft Internet Explorer Tying Case,” with Assaf Eilat, Gilad Levin, Andrea Lofaro, and Jan Peter van der Veer, Submitted to the Commission of the European Communities, COMP/C-3/39.530, April 24, 2009.
- “The Empirical Effects of Collegiate Athletics: An Update Based on 2004-2007 Data,” with Mark Israel, February 2009.
- “An Econometric Analysis of the Matching Between Football Student Athletes and Colleges,” with Yair Eilat, Bryan Keating, and Robert Willig, January 2009.
- “An Economic Assessment of Regulating Credit Card Fees and Interest Rates,” with Susan H. Manning, October 2007.
- “An Assessment of the Competitive Effects of the SKY-Prime Merger: Lessons from the Recent News Corp.-DIRECTV Merger,” with Cristian Santesteban, Submitted to New Zealand Commerce Commission, January 23, 2006.
- “Closing the College Savings Gap,” with Peter Orszag and Jason Bordoff, November 2005.
- “Putting in Place An Effective Media Player and Media Server Remedy,” with Joseph E. Stiglitz, Submitted to the Korean Fair Trade Commission, October 10, 2005.
- “An Economic Analysis of Microsoft’s Tying of the Windows Media Player to the Windows Operating System and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz, Submitted to the Korean Fair Trade Commission, September 12, 2005.
- “Economic Analyses of Microsoft’s Abusive Tie and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz and Sangin Park, Submitted to the Korean Fair Trade Commission, September 12, 2005.
- “The Empirical Effects of Division II Intercollegiate Athletics,” with Peter R. Orszag, June 2005.
- “An Economic Analysis of Microsoft’s Abusive Tie and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz and Jason Furman, Submitted to the European Court of First Instance, Case T-201/04 R, May 12, 2005.
- “The Physical Capital Stock Used in College Athletics,” with Peter R. Orszag, April 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Update,” with Peter R. Orszag, April 2005.
- “Putting in Place An Effective Media Player Remedy,” with Joseph E. Stiglitz, Submitted to the Commission of the European Communities, April 27, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Interim Report,” with Robert E. Litan and Peter R. Orszag, the National Collegiate Athletic Association and Seago Associates, Inc., August 2003 (reprinted in *The Business of Sports*, edited by Scott Rosner and Kenneth Shropshire (Jones and Bartlett Publishes, 2004)).

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- “Learning and Earning: Working in College,” with Peter R. Orszag and Diane M. Whitmore, *Journal of Student Employment*, Volume IX, Number 1, June 2003.
- “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” with Joseph E. Stiglitz and Peter R. Orszag, *Journal of Bankruptcy Law and Practice*, Volume 12, Issue No. 1, February 2003.
- “The Process of Economic Policy-Making During the Clinton Administration,” with Peter R. Orszag and Laura D. Tyson, in *American Economic Policy in the 1990s*, edited by Jeffrey Frankel and Peter R. Orszag (Cambridge, Massachusetts: MIT Press, 2002).
- “The Implications of the New Fannie Mae and Freddie Mac Risk-Based Capital Standard,” with Joseph E. Stiglitz and Peter R. Orszag, *Fannie Mae Papers*, Volume I, Issue 2, March 2002 (reprinted in *Housing Matters: Issues in American Housing Policy*).
- “Hispanics and the Current Economic Downturn: Will the Receding Tide Sink Hispanics?” with Alan B. Krueger, Pew Hispanic Center, January 2002.
- “Aging in America: A Policy Perspective,” with Jonathan Gruber and Peter R. Orszag, The Pew Charitable Trusts and Sebago Associates, Inc., January 2002.
- “An Economic Analysis of Spectrum Allocation and Advanced Wireless Services,” with Martin N. Baily, Peter R. Orszag, and Robert D. Willig, Cellular Telecommunications and Internet Association and Sebago Associates, Inc., October 2001.
- “A New Look at Incentive Effects and Golf Tournaments,” in *The Economics of Sports*, edited by Andrew Zimbalist (London: Edward Elgar Publishing, 2001). Original version in *Economics Letters*, 46, March 1994, p. 77-88.
- “Learning and Earning: Working in College,” with Peter R. Orszag and Diane M. Whitmore, UPromise, Inc. and Sebago Associates, Inc., August 2001.
- “The Impact of Potential Movie and Television Industry Strikes on the Los Angeles Economy,” with Ross C. DeVol, Joel Kotkin, Peter R. Orszag, Robert F. Wescott, and Perry Wong, The Milken Institute and Sebago Associates, Inc., April 19, 2001.
- “Would Raising IRA Contribution Limits Bolster Retirement Security for Lower- and Middle-Income Families?” with Peter R. Orszag, Center on Budget and Policy Priorities, April 2, 2001.
- “Computers in Schools: Domestic and International Perspectives,” California Technology, Trade, and Commerce Agency and Sebago Associates, Inc., March 2001.
- “The Impact of Paying for College on Family Finances,” with Laura D. Tyson, Joseph E. Stiglitz, and Peter R. Orszag, UPromise, Inc. and Sebago Associates, Inc., November 2000.
- “A Simple Analysis of Discarded Votes by Precinct in Palm Beach,” with Peter R. Orszag, Sebago Associates, Inc., November 10, 2000.
- “Analysis of Votes for Buchanan by Precinct within Palm Beach and Broward Counties,” with Peter R. Orszag, Sebago Associates, Inc., November 9, 2000.
- “A Statistical Analysis of the Palm Beach Vote,” with Peter R. Orszag, Sebago Associates, Inc., November 8, 2000.
- “The Role of Government in a Digital Age,” with Joseph E. Stiglitz and Peter R. Orszag, Computer and Communications Industry Association and Sebago Associates, Inc., October 2000.
- “Quantifying the Benefits of More Stringent Aircraft Noise Regulations,” with Peter R. Orszag, Northwest Airlines and Sebago Associates, Inc., October 2000.

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- “All That Glitters Is Not Gold: The Feldstein-Liebman Analysis of Reforming Social Security with Individual Accounts,” with Peter R. Orszag, Center on Budget and Policy Priorities, April 26, 2000.
- “Would Raising IRA Contribution Limits Bolster Retirement Security For Lower- and Middle-Income Families or Is There a Better Way?” with Peter R. Orszag, Center on Budget and Policy Priorities, April 12, 2000.
- “The Economics of the U.S.-China Air Services Decision,” with Peter R. Orszag, and Diane M. Whitmore, United Parcel Service and Sebago Associates, Inc., March 2000.

OP-EDS/LETTERS TO THE EDITOR:

- “Jack Welch Could Help Improve U.S. Jobs Data,” with Peter Orszag, *Bloomberg*, October 9, 2012.
- “Giving Credit Where Credit Is Due,” *The Hill*, December 2, 2011.
- “PBMs Save Us Billions,” *The Hill*, November 28, 2011.
- “Drug Patent Settlements,” with Robert Willig, *New York Times*, July 19, 2010.
- “Homeowners Defense Act Could Lower Insurance Premiums,” *Treasure Coast Palm*, September 24, 2009.
- “Katrina Teaches Us To Financially Prepare Today for the Catastrophe of Tomorrow,” *San Angelo Standard-Times*, September 23, 2009.
- “A Catastrophe Waiting To Happen,” *The Daily Citizen*, September 15, 2009.
- “Broadband: Now A ‘Necessity’,” *Multichannel News*, August 10, 2009.
- “Forget the Estate Tax: America Needs An Inheritance Tax,” *Ideas Primary*, January 23, 2008, available at <http://www.ideasprimary.com/?p=442>
- “Credit Where It’s Due,” *Wall Street Journal*, October 25, 2007.
- “Congress Grounds Delivery Competition,” Sebago Associates, Inc., April 17, 2003.
- “Paul O’Neill Doesn’t Cry for Argentina,” Sebago Associates, Inc., August 3, 2001.
- “Do You Recognize The Clinton West Wing in *The West Wing*?” *The Atlantic Monthly* Online, March 2001.

SPEECHES AND PRESENTATIONS:

- “Upward Price Pressure and Merger Analysis: What Is UPP’s Proper Role and How Can UPP Deal With Real-World Issues?” Presentation to Gilbert + Tobin, Sydney, Australia, December 4, 2012.
- “Obama’s Second Term: What It Means for the U.S. and World Economies,” FTI Consulting, Inc., Brisbane, Australia, December 3, 2012.
- “Merger Substance: How to Conduct a Proper Analysis of a Merger’s Competitive Effects, and How to Frame Related Legal Standards?” Panelist at Antitrust in Asia, American Bar Association, New Delhi, India, December 1, 2012

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- “Financial Issues in College Sports,” Panelist at the Third Annual Sports Law Symposium: What is the Proper Role of Sports in Higher Education?, Institute of Sports Law and Ethics, Santa Clara University, September 6, 2012.
- “Pricing and Bundling of IT Products: Drawing The Line Between Lawful and Unlawful Behaviour,” Panelist on GCR Live’s Antitrust and Technology 2012, London, England, March 14, 2012.
- “The Role of Economic Evidence in Cartel Enforcement,” Speaker on ABA Section of International Law Teleconference, February 28, 2012.
- “Reverse Payment Settlements in the Pharmaceutical Industry,” Presentation to the House Energy and Commerce Committee Staff, July 15, 2011.
- “Increased Government Intervention: The Good, The Bad, and the Ugly,” Panelist, Association of Management Consulting Firms, New York, NY, December 2, 2010.
- “The Economic Challenges and Trade-Offs Facing the Obama Administration,” Remarks to RBS Citizens, Boston, MA, June 8, 2010.
- “Competition Policy As Innovation Policy,” Panelist, Computer & Communications Industry Association, Washington DC, October 27, 2009.
- “State of the Market: Regulatory Evolution and Policy,” Moderator, Youth, I.N.C. and Piper Jaffray, New York, NY, September 29, 2009.
- “The Empirical Effects of Collegiate Athletics,” Presentation to the NCAA Leadership Advisory Board, Detroit, Michigan, April 4, 2009.
- “The Economic Challenges and Trade-Offs Facing the Obama Administration,” Remarks to the Junior Capital Group, Proskauer Rose, LLP, New York, NY, February 10, 2009.
- “Managing Communications During Unprecedented Economic Times,” Panelist, The California Club, Los Angeles, CA, January 27, 2009.
- Presentation to the Computer & Communications Industry Association’s Antitrust Summit on Innovation and Competition Policy in High-Tech Markets, Washington DC, October 24, 2008.
- Presentation to the Center for American Progress Action Fund Session on the “Avoiding the Pitfalls of Credit Card Debt,” Washington, DC, February 25, 2008.
- “Distribution Fund Planning and Management: Lessons Learned from the Global Research Analyst Settlement,” with Francis McGovern, Presentation to the Securities and Exchange Commission, Washington, DC, January 31, 2006.
- “The Empirical Effects of Division II Intercollegiate Athletics,” Presentation to the National Collegiate Athletic Association 2006 Annual Convention, Indianapolis, Indiana, January 8, 2006.
- “Rules of the Game: Defining Antitrust Markets in Cases Involving Sports,” Presentation to the Wilmer, Cutler, Pickering, Hale & Dorr Antitrust Lunch, Washington, DC, December 8, 2005.
- “Competition Policy, Antitrust, and The High-Tech Economy,” Keynote Address to the Computer & Communications Industry Association TechSummit 2005, Laguna Beach, CA, October 26, 2005.
- “The Empirical Effects of Division II Intercollegiate Athletics,” Presentation to the Division II Chancellors and Presidents Summit, Orlando, FL, June 25, 2005.

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- “The Empirical Effects of Collegiate Athletic Spending: An Update and Extension,” Presentation to the President’s Task Force on the Future of Intercollegiate Athletics, Tucson, AZ, June 9-10, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Update and Extension,” Presentation to the NCAA Division I Board of Directors, Indianapolis, IN, April 28, 2005.
- “An Analysis of Division II Athletic Expenditures: Preliminary Findings,” Presentation to the NCAA Division II Board of Directors, Indianapolis, IN, April 28, 2005.
- “An Analysis of Division II Athletic Expenditures: An Overview of Study Design,” Presentation to the National Collegiate Athletic Association 2005 Annual Convention, Grapevine, Texas, January 8, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Interim Report,” Presentation to the National Association of State Universities and Land Grant Colleges Annual Conference, November 17, 2003.
- “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” *South Texas Law Review*, “Symposium: Asbestos Litigation,” Fall 2003.
- “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” Presentation to the Conference on “Understanding Asbestos Litigation: The Genesis, Scope, and Impact,” U.S. Chamber of Commerce, Washington, DC, January 23, 2003.
- “The Process of Economic Policy-Making During the Clinton Administration,” Presentation to the Conference on “American Economic Policy in the 1990s,” Center for Business and Government, John F. Kennedy School of Government, and Harvard University, Cambridge, MA, June 29, 2001.
- “The Impact of Paying for College on Family Finances,” Presentation to the Conference on “Funding Excellent Schools and Colleges for All Students,” National Conference of State Legislatures, Savannah, Georgia, February 17, 2001.
- “China and the Internet,” Remarks on Entertainment and the Internet in China at the EMASIA 2000 Forum, The Asia Society, Los Angeles, CA, May 23, 2000.
- “Is It The Star or Just an Extra? The Role Government Plays in a Digital Economy,” Remarks on the Regulation of Global Electronic Commerce at the eCommerce and Global Business Forum, The Anderson School at UCLA and the University of Washington Business School, Santa Cruz, CA, May 18, 2000.
- “Lessons Learned from the Emergency Loan Guarantee Programs,” Keynote Address at the Government Guaranteed Lending 2000 Conference, Coleman Publishing, Inc., May 4, 2000.
- “Don’t Just Think, Believe,” Remarks to the Assembly of Phillips Exeter Academy, Exeter, New Hampshire, February 9, 1999.

TESTIMONY:

- *VOOM HD Holding LLC v. EchoStar Satellite LLC*, In the Supreme Court of the State of New York, County of New York (Index No. 600292/08) (Expert Report: December 4, 2009; Deposition Testimony: March 5, 2010; Supplemental Expert Report: August 10, 2012; Supplemental Deposition Testimony: September 14, 2012; Jury Trial Testimony: October 11-12, 2012).

REDACTED – FOR PUBLIC INSPECTION

- *Hewlett-Packard Company v. Oracle Corporation*, In the Superior Court of the State of California, County of Santa Clara (Case No 1-11-CV-203163) (Expert Report: March 26, 2012; Rebuttal Report: April 9, 2012; Deposition Testimony: April 19, 2012; Supplemental Report: December 10, 2012).
- *In The Matter of Game Show Network, LLC v. Cablevision Systems Corporation*, in File No. CSR-8529-P, Before the Federal Communications Commission (Expert Report: December 12, 2011; Reply Declaration: February 9, 2012).
- “The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?” Written Testimony to the Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, December 6, 2011.
- *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control Licenses and Authorization*, in WT Docket No. 11-65, with Robert D. Willig and Jay Ezrielev, Submitted to the Federal Communications Commission, Commissioned by AT&T, June 9, 2011.
- *In The Matter of The Tennis Channel v. Comcast Cable Communications, LLC*, in File No. CSR-8258-P, Before the Federal Communications Commission (Expert Report: February 25, 2011; Deposition Testimony: March 8, 2011; Written Direct Testimony: April 15, 2011; Rebuttal Declaration: April 26, 2011; Courtroom Testimony: April 27, 2011; Supplemental Deposition Testimony: May 1, 2011; Supplemental Rebuttal Declaration, May 12, 2011).
- “Response to Supplementary Comments of Hubert Horan,” Submitted to the Department of Transportation, *Joint Application of Delta Airlines, Inc.; Virgin Blue Airlines PTY LTD; Virgin Blue International Airlines PTY LTD d/b/a V Australia; Pacific Blue Airlines (NZ) LTD; and Pacific Blue Airlines (Aust) PTY LTD*, with Mark Israel, Bryan Keating, and Robert Willig, Docket DOT-OST-2009-0155, Commissioned by Delta Air Lines, October 22, 2010.
- “Measuring Consumer Benefits from Antitrust Immunity for Delta Air Lines and Virgin Blue Carriers,” Submitted to the Department of Transportation, *Joint Application of Delta Airlines, Inc.; Virgin Blue Airlines PTY LTD; Virgin Blue International Airlines PTY LTD d/b/a V Australia; Pacific Blue Airlines (NZ) LTD; and Pacific Blue Airlines (Aust) PTY LTD*, with Mark Israel, Bryan Keating, and Robert Willig, Docket DOT-OST-2009-0155, Commissioned by Delta Air Lines, October 13, 2010.
- *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, with Allan Shampine, Submitted to the Federal Communications Commission (WC Docket No. 07-245; GN Docket No. 09-51), Commissioned by the Edison Electric Institute, Declaration Submitted on October 4, 2010; Supplemental Declaration, Submitted on December 14, 2010.
- *In The Matter of The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Submitted to the Federal Communications Commission (File No. CSR-8258-P), Commissioned by Comcast Corporation (Declaration: February 11, 2010; Reply Declaration: April 13, 2010).
- *In Re: Cable Subscribership Survey For the Collection of Information Pursuant to Section 612(g) of the Communications Act*, with Michael Katz and Theresa Sullivan, Submitted to the Federal Communications Commission (MB Docket No. 07-269), Commissioned by the National Cable & Telecommunications Association, DIRECTV, and DISH Network, December 16, 2009.
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- *In The Matter of TCR Sports Broadcasting Holding, LLP d/b/a Mid-Atlantic Sports Network v. Comcast Corporation*, in MB Docket No. 08-214, File No. CSR-8001-P, Before the Federal Communications Commission (Expert Report: March 19, 2009; Deposition Testimony: April 23, 2009; Courtroom Testimony: May 26, 2009; Reply Declaration: June 1, 2009).
- *In The Matter of NFL Enterprises LLC v. Comcast Cable Communications, LLC*, MB Docket No. 08-214, File No. CSR-7876-P, Before the Federal Communications Commission (Expert Report: March 13, 2009; Deposition Testimony: April 1, 2009; Written Direct Testimony: April 6, 2009; Courtroom Testimony: April 16, 2009).
- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Centennial Communications Corp. to AT&T*, with Robert D. Willig and J. Loren Poulsen, Submitted to the Federal Communications Commission, Commissioned by AT&T, November 21, 2008.
- *In The Matter of TCR Sports Broadcasting Holding, LLP v. Comcast Corporation*, with Jay Ezrielev, Submitted to the Federal Communications Commission (File No. CSR-8001-P), Commissioned by Comcast Corporation, July 31, 2008.
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- *In The Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Filed in Conjunction With Reply Comments Submitted to the Federal Communications Commission (MB Docket No. 07-29; MB Docket No. 07-198), Commissioned by Discovery Communications, Inc., February 12, 2008.
- *In Re: Intel Corp. Microprocessor Antitrust Litigation; Phil Paul et al v. Intel Corporation*, In the United States District Court for the District of Delaware (MDL Docket No. 05-1717 (JJF) and C.A. No. 05-485 (JJF) (Declaration: August 10, 2007; Declaration: April 23, 2007).
- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Dobson Communications to AT&T*, with Robert D. Willig, Submitted to the Federal Communications Commission, Commissioned by AT&T, July 12, 2007.
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- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation to ALLTEL Corporation*, with Robert D. Willig and Yair Eilat, Submitted to the Federal Communications Commission (WT Docket No. 05-50), Commissioned by ALLTEL Corporation and Western Wireless Corporation, March 29, 2005.

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- “The Department of Commerce Fiscal Year 2001 Budget and Its Native American Initiatives,” Testimony to the United States Senate Indian Affairs Committee, February 23, 2000.
- “Testimony on S. 614: The Indian Tribal Regulatory Reform and Business Development Act,” Testimony to the United States Senate Indian Affairs Committee, May 19, 1999.

Materials Relied Upon

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